The Solicitors' Journal

Vol. 97 February 14, 1953 No. 7

CURRENT TOPICS

Tribunal's Knowledge of Previous Convictions

THE Divisional Court (the LORD CHIEF JUSTICE, LYNSKEY and PEARSON, JJ.) on 2nd February refused to make an order of certiorari in a case where it was claimed that there had been a denial of natural justice by the Dorset Sessions Appeals Committee, because they dismissed an appeal knowing the appellant's bad record. The Lord Chief Justice said that Parliament had decided that cases going forward to quarter sessions for sentence had to be considered by the appeals committee, which was now the only body which could hear appeals from justices. It happened over and over again that persons sent forward for sentence also wished to appeal against their conviction. Parliament might have provided that, if an appeal were entered, the determination of the sentence should go to a different body ; but Parliament had decided that it should go to the same body. In the circumstances it was a matter of ordinary machinery that justices sitting on the appeal must know that the appellant had been sent to them for sentence because of his or her bad record. From time to time, as the court knew, justices had quashed convictions of a person sent forward for sentence. Justices could be trusted to deal with such cases fairly, and in this case the court could see no reason for saying that justice was not done in accordance with the Act of Parliament.

The Hospitals and Medical Reports

As a result of discussions between the Council of The Law Society and the Ministry of Health it is now announced in the February issue of the *Law Society's Gazette* that solicitors wishing, for the purposes of legal proceedings, to obtain reports on patients who have received hospital treatment should write to the Secretary of the Hospital Management Committee or to the Secretary of the Board of Governors rather than to individual members of the medical staff. No obstacle will be raised if neither the hospital authority nor any member of the hospital staff is a potential defendant and the report is required for the patient himself. In cases of any difficulty the Ministry will be prepared to take up the matter with the hospital authorities. If the report is required on behalf of some person other than the patient, and if neither the hospital authority nor any member of the hospital staff is a potential defendant, the written consent of the patient must first be obtained. If his consent is withheld the solicitor acting for the other person will have to consider what further action to take, such as the issue of a subpœna or an application for discovery. The provision of such reports is outside the scope of the National Health Service and the individual doctor has a discretion to decide whether to supply a report. The doctor is entitled to a fee for the report, but the work of writing a report varies, and it has been found impracticable to fix a standard fee. No fees should be charged (i) if the patient is still under observation or treatment and the information can be given from records or information acquired in the course of attendance, and without a special examination of the patient, or (ii) if all that is required is part of the patient's hospital record. If either the hospital

CONTENTS

authority or a member of the hospital staff is a potential defendant, the hospital authority is expected to use its discretion in deciding whether to supply the report.

Solicitors as Town Clerks

UNDER the heading "Do Solicitors Make Good Town Clerks?" "W. E. J.," writing in the February issue of the *Secretary*, stated: "Legal training does something to a man. It cultivates a certain meticulosity (or, as the Oxford English Dictionary defines it, excessive scrupulousness). A lawyer-town clerk, faced with a proposition before his council, may be inclined to ask, 'Is it lawful?' rather than 'Is it good sense?' Town clerks who are not lawyers may be less worried by legal niceties, although (believe it or not) some of our non-lawyer officials are more legalistic than the law. . . . The fact is that in the work of local government one can hardly operate at all without some legal knowledge . . . one may well ask whether the full training of a solicitor . . . is appropriate for the legal and administrative work of local government, especially as it is quite possible to become qualified as a solicitor without any knowledge at all of local government law and practice . . ." The writer noted that not all clerks of local authorities are solicitors, but the practice of appointing solicitors to these offices has become established. Although the writer questioned the advantage of the practice, we cannot imagine better appointees than those who have been trained to cope with statutes and decisions over a wide range of subjects, and who, in many cases, have been articled to town clerks. Moreover, there is public advantage in responsible officials belonging to an organisation with a strict code of professional honour.

The Law Society's Conditions of Sale

"IF the present rate of progress of the Town and Country Planning Bill is maintained it is expected that the new edition of The Law Society's Conditions of Sale will be published on 1st March, 1953." This statement, published in the February issue of the *Law Society's Gazette*, is made by way of qualification of an announcement in the issue for the previous December, that the Government White Paper and the new Bill had delayed publication of the new Conditions of Sale. The reference to the Bill's "present rate of progress" is perhaps surprising, for as far as we can trace the Bill has made no further progress since its Second Reading in the Commons on 1st December, 1952, and the debates in standing committee on 16th and 17th December.

Evidence and the Confessional

WE have been interested to receive from S.P.C.K. a pamphlet published at one shilling and entitled "The Seal of the Confessional and the Law of Evidence" by Peter Winckworth. The question considered is the important one whether communications made to a priest in the confessional are by English law protected from disclosure in a court of justice. Examining first the canon law, Mr. Winckworth concludes that within the Church the penitent may expect the most complete secrecy regarding any sin that he may disclose under the seal of sacramental confession. The position in courts of law is less certain. Citing the leading text-books on evidence and some half-dozen reported cases, the essayist is unable to point to any authority directly on the point. Privilege exists for communications between a person and his legal adviser; spiritual and medical advisers have been ordered to disclose information which in their professional capacities they have confidentially acquired. But apart from *R.* v. *Hay* (1860), 2 F. & F. 4, in which a Catholic priest was committed for contempt for refusing to say by whom stolen property was given to him "in connection with the confessional," no case appears directly to have concerned information imparted under the sacramental seal. Canon law has been confirmed by statute so far as not repugnant to common or statute law, and there seems to be justification for re-echoing the conclusion of Sir Robert Phillimore, who thought it not improbable that, when the question is raised in an English court of justice, "that court will decide it in favour of the inviolability of the confession, and expound the law so as to make it in harmony with that of almost every other Christian State."

Costs

NEGOTIATING FEES AND THE NEW REMUNERATION ORDERS

IT will be observed that one of the hardships surrounding solicitors' remuneration for non-contentious work has now been removed, for by the new Solicitors' Remuneration Order (S.I. 1953 No. 117 (L.1)), Sched. II is to cover, *inter alia*, "negotiation of sales, purchases and leases." The principle that under the order of 1883 the solicitor's work in connection with negotiations for a lease must be deemed to be covered by the scale fee for the lease was settled as long ago as 1885 (*Re Field*, 29 Ch. D. 608). The position was inequitable since the solicitor was entitled to claim remuneration for abortive negotiations, but not for negotiations which led up to the completion of the lease in respect of which he received scale remuneration (*Re Robson* (1890), 45 Ch. D. 71). It is surprising that it took so many years for this inequity to be remedied.

The question will now arise (as it has arisen in the past with regard to negotiations for a sale or purchase which hitherto have been remunerated by a scale charge) just where the negotiations cease and where the work in connection with which the scale charge is to be made commences. Indeed, now that the remuneration in respect of the negotiations is to be on a "fair and reasonable" basis under Sched. II, the question will arise in a more acute form, for in the past, so far as the negotiations for a sale or purchase were concerned, in the case of completed transactions it did not matter very much where one operation ceased and another commenced. The whole of the remuneration was covered by one scale charge or the other. Now, however, it will be necessary to define with particularity what work relates to negotiations and what relates to "preparing, settling and completing the lease and counterpart," since, of course, the more work that is done in respect of the negotiations the more will fall to be charged in the way of a fair and reasonable fee under Sched. II.

There is little to guide us. So far as negotiations for a sale or purchase are concerned, Lindley, L.J., in the case of *Re McGowan*; *McGowan* v. *Murray* [1891] 1 Ch. 105, observed, at p. 114, that when the solicitor can go to the client and say "There are the terms; there is the price and there are the conditions," then he has done all that is necessary to entitle

him to the scale remuneration for negotiating. However, in the case of leases, and, for that matter, sales and purchases now, there is no scale negotiating fee and the solicitor will be remunerated according to the work done. He may do much or he may do little in the way of negotiating. He may not, indeed, do any of the negotiating at all himself, but may instruct, on the client's behalf and with his consent, an agent to do that part of the work. He will still be entitled to a fee of sorts for the work which he does in the way of instructing the agent.

The question will arise, in any case, as to where the negotiating ends and the scale work commences. The head note to the scale fee under Pt. 2 of Sched. I to the order of 1883 states that the scale charge is for " preparing, settling and completing lease and counterpart," so that the scale fee is intended to cover only the actual work in connection with the lease itself.

As is well known, the solicitor, whether for the lessor or the lessee, is usually instructed at the very outset to prepare or to settle a lease, as the case may be, and he is normally given the barest details of the terms. If he is the solicitor for the lessor, then he draws the lease on principles which are of the greatest advantage to the lessor, and it is at that stage that the negotiations for the detailed terms normally commence, the solicitor for the lessee, with his client's interest in view, objecting to terms which he considers onerous to his client, and so the matter goes on until it is finally settled to the satisfaction of the parties. It cannot be disputed that a good deal of the correspondence between, and the attendances on, the respective solicitors with regard to the terms is in the nature of negotiating, but it seems open to question whether it can be remunerated as such.

When once the lease is drawn, or prepared, to use the term in the order, the subsequent negotiations between the solicitors with regard to the detailed terms are really covered by the word " settling," and if this is right, then such negotiations must be regarded as part of the work included in the scale remuneration. It would seem, therefore, that although the new order gives a solicitor a right to a negotiating fee in respect of leases, it will be of no effect unless all these negotiations with regard to the details of the terms are done *before* the lease is drawn at all and are not left to be dealt with as part of the work of settling the terms of the lease. Cases are known where even the provisions of the lease with regard to the rent payable have been the subject of subsequent amendment, before the draft lease was finally settled. This, clearly, is work which comes under the heading of negotiation, but since the negotiations took the form of amendments to a draft lease it is submitted that they would be covered by the scale charge. It is emphasised, therefore, that only in a case where these details are settled between the solicitors before the lease is drawn will the solicitor be entitled to anything over and above the scale charge.

The same principles will apply so far as sales and purchases are concerned, but the difficulties of separating the negotiations from the work covered by the scale charge will be considerably less, for normally all the terms of the purchase or sale are concluded before the contract is drawn. Here again, however, instances are on record where the price included in the contract has been the subject of protracted correspondence after the contract was drawn. What has been written above with regard to the settling of the terms of the lease will apply with equal force to the settling of the terms of the contract for sale or purchase, and if negotiations are entered into between the solicitors which take the form of amendments to the contract, then the work connected with those negotiations will be covered by the scale fee, and cannot be made the subject of a separate fee under Sched. II, although such work is really in the nature of negotiating, and would, if performed before the contract is drawn, entitle the solicitor to an additional fee under Sched. II.

It is true that the scale fee under Sched. I, Pt. 1, is expressed to include, in the case of the vendor's solicitor, the " preparation of contract or conditions of sale," and in the case of the purchaser's solicitor the " perusal and completion of contract, if any," and nothing is said, as it is in the case of a lease, about settling the terms of the document. However, it may also be noticed that there is no mention of settling the terms of the principal document in a sale or purchase, namely, the conveyance, although clearly the settling of the terms must be deemed to be included in the scale charge, and, by the same reasoning, the settling of the terms of the contract must also be deemed to be covered by the scale charge.

The taking out of Sched. I and the transferring to Sched. II of the work in connection with the negotiations for a sale or purchase may or may not result in an increase in the fees to which a solicitor may be entitled for this type of work. It will, of course, now depend on many factors, some of which are set out in Sched. II, and with which we will deal in due course. There seems to be something inconsistent about leaving the work of negotiating for loans on mortgage within the ambit of Sched. I and taking very similar work in connection with the negotiating of sales and purchases out of that schedule, but that is the effect of the order. This will mean that for very similar work done by the solicitor there will in future be two very different bases of remuneration. Both the mortgagee's solicitor and the mortgagor's solicitor will now receive an all-round increase in the scale charges for their work in connection with the negotiation of the loan, without any limit on the fee where the amount involved is more than £100,000.

The difficulties to which we have referred above in differentiating between the work of negotiating and the work in connection with the mortgage will not arise so far as either the mortgagor's or the mortgagee's solicitors are concerned. If they have done what is required in order to earn the negotiating scale fee, then they will be entitled to charge it, whether the negotiating is done before the documents are drawn or whether it is done during the course of preparing, perusing and completing the mortgage.

J. L. R. R.

At a meeting of the London and Home Counties Branch of the Local Government Legal Society, held at The Law Society, 60 Carey Street, W.C.2, on 30th January, 1953, Mr. Carol Johnson, C.B.E., solicitor, Secretary of the Parliamentary Labour Party, gave a very enlightening talk on " Behind the Scenes in the House of Commons." Much interest was evoked, and Mr. Johnson answered numerous questions put by members at the conclusion of his address. Solicitors and articled clerks in local government offices who desire to become members of the branch should write to the Hon. Secretary, Mr. F. Dixon Ward, Town Hall, West Ham, E.15.

MIDDLESEX COUNTY COUNCIL'S DEVELOPMENT PLAN

Late Objections

Arrangements are being made for the holding of a public local inquiry next month into the 7,000 objections received to the Middlesex County Council's development plan. The official closing date for objections was 31st August, 1952, but the Ministry of Housing and Local Government have continued to record objections received since that date. A programme is being worked out for the hearing of all objections received in the Ministry up to 10th February. Objections received after that date cannot be guaranteed a place in the programme.

A Conveyancer's Diary

NATHAN COMMITTEE: SCHEME-MAKING POWERS

FROM the long-term point of view the most important recommendation among the many valuable proposals made by the committee is that on the relaxation of the *cy-près* doctrine. In the committee's own words, "we are satisfied that the most urgent need is to enable the [Charity] Commissioners to give more timely and effective assistance to the numberless bodies of trustees who are administering faithfully and to the best of their ability trusts which for various reasons are no longer well adapted to modern conditions. The witnesses who appeared before us were practically unanimous in urging that the most important step in this direction would be to relax the rigour of the *cy-près* doctrine at present binding both on the courts and on the central authorities."

The *cy-près* doctrine is that whereby, where a clear charitable intention is expressed, it will not be permitted to fail because the mode, if specified, cannot be executed, but the law substitutes another mode, *cy-près*, that is, as near as possible to the mode specified by the founder of the trust. But the *cy-près* doctrine can only be applied where it is clearly established that the specified mode cannot be carried into effect, and that the founder of the trust had a general charitable intention. The first of these conditions is one which it is not easy to satisfy. Changes in social conditions may render a certain mode of application of trust funds obsolete, as has happened in the cases (cited in the committee's report) of trusts for the benefit of persons imprisoned for debt, for the emancipation of slaves, or for the benefit of marines captured by Barbary pirates. But of many other trusts, such as, for example, trusts for apprenticing young men to certain trades in certain localities, it cannot be said that the object has totally failed, although the trustees may find difficulty in finding enough suitable candidates to exhaust the income of such trusts. But unless it can be shown that there has been a total failure of the objects of the trusts, the *cy-près* doctrine cannot, as matters stand, be applied, and the trust funds must remain virtually sterilised for lack of an up-to-date permissible mode of application.

To the strict limitation upon the application of the *cy-près* doctrine by the courts and the Charity Commissioners there have in the past been some notable exceptions made by the Legislature. The most considerable was that contained in the Endowed Schools Acts, 1869 to 1948, which in effect gave power to an *ad hoc* commission to reorganise certain educational trusts "in such manner as may render [them] most conducive to the advancement of education of boys and girls," and enabled the commission, amongst other things, to alter and add to existing trusts, to make new trusts in lieu of existing trusts, and to consolidate or divide endowments. This legislation also enabled the commission to make schemes for the application for the education of boys and girls of the endowments of certain trusts which were specifically declared to have become impracticable or obsolete, such as trusts for the relief of "poor prisoners for debt," or for the provision of marriage portions. These Acts made a clear break with the existing practice, within the limits of their operation, since under the first head of the powers conferred on the commissioners, trust funds could be diverted from one purpose to another although there was no question of the original purpose having totally failed, and under the second head the commission's power made it possible to apply funds whose original purpose had failed for purposes not "as near as possible" to the original purposes, but for totally distinct educational purposes. Another instance of the wholesale diversion of charitable trust funds from the original purposes for which they were given to new and more useful purposes is to be found in the City of London Parochial Charities Act, 1883, one of the principal effects of which was to enlarge the area from which beneficiaries to a great many originally parochial trusts could thenceforth be selected, by enabling schemes to be made for the amalgamation of various small charities and the substitution of the metropolis as a whole for a single parish as the area of their operation.

In the committee's view, the circumstances which in the 'sixties led to the departure from the full rigour of the *cy-près* doctrine in educational matters are now, as the result of recent social legislation, closely paralleled in other fields of charitable endowment, and the time is consequently ripe for some relaxation of the doctrine in the case of all charitable trusts. This matter of principle once decided, a number of subsidiary questions had to be considered by the committee, the chief ones being those concerning the circumstances in which schemes for the application of trust funds for purposes other than their original purposes should be made, and the limitations to be placed on the power to make schemes which alter the original purposes of charitable endowments.

To the first of these problems there are, broadly speaking, two possible approaches. The Endowed Schools Act, 1869, listed a number of charitable purposes (e.g., the relief of persons imprisoned for debt) which the Legislature deemed to be obsolete, and funds held upon trust for these specified purposes were by express provision made available for application, through the media of schemes, for the educational purposes of the Act. Similar Scottish legislation, on the other hand, empowers the Secretary of State for Scotland to alter the purposes for which educational endowments are applied by framing schemes, and his powers are not restricted to any specified classes or types of charitable purpose or endowment, but are quite general. The only limitation on the exercise of these powers is a provision that, in framing any scheme, the Secretary of State shall have regard to a number of specified factors, of which the most important are (*a*) the spirit of the intention of the founders, (*b*) the interest of the locality to which the endowment belongs, and (*c*) the possibility of effecting economy in administration by grouping or amalgamating endowments. In its recommendation under this head the committee prefers the method of the Scottish legislation—that is, laying down in general terms the circumstances which justify a diversion of trust funds—to that hitherto adopted in England—naming specific objects as obsolescent. In the committee's view, any specification of obsolescent objects is itself liable to become obsolescent, as has perhaps already happened in the case of some of the objects which were deemed to have become obsolete in 1869, but which some observers think would still serve a useful end to-day, if there were any funds available for such purposes, e.g., the provision of marriage portions. The recommendation, therefore, is that the *cy-près* doctrine should be relaxed so as to admit of trust instruments being altered by scheme in circumstances falling short of the original objects of the trust becoming impracticable, and that charitable trusts of all kinds should be put on the same footing as are educational trusts in Scotland, and on very much the same footing as educational trusts in England under the Endowed Schools

Acts. Further, the general principles of the Scottish, rather than of the English, legislation on this subject should be adopted, that is to say, the Legislature should, without naming objects which it regards as obsolete or obsolescent, prescribe the circumstances in which obsolescence may properly be assumed.

This power to make schemes altering the objects of charitable trusts, which the committee recommends should be conferred on the appropriate authority as an additional power to that which already exists under the *cy-près* doctrine developed by the Court of Chancery and not in substitution for that power, should, in the committee's opinion, be subject to two important limitations. In the first place, the authority exercising the power to make schemes should be directed to have special regard to these matters to which, as already mentioned, the Secretary of State must pay regard in the exercise of his scheme-making powers under the Scottish legislation affecting educational endowments; and in the second place, no alteration of trusts under the new power should, it is recommended, be made within thirty-five years from the foundation of the trust, unless the trustees and, if living, the founder of the trust consent thereto.

The committee also makes certain recommendations dealing with the administrative aspects of this new jurisdiction. As to the initiation of schemes, it is proposed that although a scheme should normally be put forward by the trustees of the trust concerned, the scheme-making authority (that is to say, the Ministry of Education for educational trusts and the Charity Commissioners for all other charitable trusts) should also have power to initiate a scheme. Moreover, certain local authorities should have the power to make proposals regarding any trust operating in their areas, the recommended authorities for this purpose being any county or county borough council and, in London, the Corporation of the City of London, the London County Council and the Metropolitan borough councils. If either the trustees or the local authority concerned put forward a scheme which is not acceptable to the central authority, they or it should be entitled to have the proposals examined at a local public inquiry. There should be a right of appeal, on the lines of that already existing in the case of schemes made by the central authority, by the trustees of any charitable trust to the court (the Chancery Division of the High Court) against a scheme made by the central authority, subject, in the case of any trust the gross income whereof is less than £50 a year, to the consent of the Attorney-General. The existing procedure for making schemes by the central authority provided by the Charitable Trusts Acts, which ensures ample publicity for any proposed scheme, is in the committee's opinion adequate, and should serve as a model for the procedure to be adopted for the invocation of the new power of making schemes, but it is suggested that an expedited procedure for altering methods of administration (as opposed to the objects of the trust) could also be provided.

The only exceptions which the committee recommends to the proposed new jurisdiction to make schemes are charitable trusts created by Act of Parliament and Royal Charters: these, it is proposed, should continue to be alterable only by Act of Parliament or Royal Charter, as the case may be.

These recommendations form the core, as it were, of the committee's report, dealing as they do with the manifest desirability of bringing up to date and fitting for the purposes of present-day life a vast number of charities, mostly small, whose objects have become outmoded and for whose benefits trustees are sometimes hard put to find suitable recipients. To speak of these proposals as if they were an extension of the *cy-près* doctrine is obviously an understatement; the existing jurisdiction both of the court and of the central authorities to remodel a trust *cy-près*, that is, by substituting for the existing but impracticable purposes of a charitable trust other purposes as near thereto as may be practicable, it is proposed to leave undisturbed; but it is pretty clear that if the much wider powers of remodelling trusts which it is proposed to confer, as parallel powers, on the central scheme-making authorities are in fact conferred, the new jurisdiction will soon drive out the old. What the fate of these recommendations may be is, however, uncertain. They are undoubtedly full of common sense, but many charities are local affairs, and there would doubtless be much opposition in Parliament to the conferment of powers on central authorities the exercise of which might, and almost certainly would, have the effect of diminishing the local connection of existing charities. There is, moreover, the further difficulty that the efficient discharge of these extensive new duties by the Charity Commissioners and the Ministry of Education would need considerable additions to their existing staffs, and this is not a propitious time for such proposals. Taking them all in all, it may thus be many years before these particular recommendations of the committee are given legislative form.

"A B C"

Landlord and Tenant Notebook

FLOODS

It is to be assumed that some of the 250,000 acres recently flooded by the North Sea consists of demised property and that many of the landlords and tenants are wondering what, if any, effect the disastrous event may have on their legal rights and obligations. The event differs both in magnitude and in nature from that of the Lynmouth flood which occurred in September last; and a suggestion that the difference in nature might entail a difference in legal consequences will be discussed presently.

For the sake of completeness, I will first mention the question of tenants' liability for waste. Generally speaking, of course, there will be some contractual liability imposed by the lease or agreement, with which he may have to deal; but, apart from the fact that there is authority for the proposition that a landlord may be able to claim under both heads (see *Marker* v. *Kenrick* (1853), 13 C.B. 188), a passage from Coke-upon-Littleton might conceivably be cited in connection with the question of frustration to which I will come later. In Lib. I, cap. 7, s. 67, we find "Also, if tenements be let to a man for terme of half a yeare, or for a quarter of yeare, etc., in this case, if the lessee commit wast, the lessor shall have a write of waste against him . . ." and Note (*q*) to this section runs: "It is wast to suffer a wall of the sea to decay, so as by the flowing and reflowing of the sea, the meadow or marsh is surrounded, whereby the same becomes unprofitable; but if it be surrounded suddenly by the rage or violence of the sea, occasioned by winde, tempest, or the like, without any default in the tenant, this is no wast punishable. So it is, if the tenant repaire not the bankes or walls against rivers, or other waters, whereby the meadows or marshes be surrounded, and become rushy and unprofitable."

As the author of the above must have had agricultural property mainly in mind, I might mention that there may be some occasion to invoke the law of waste in the case of farms even to-day. For while, if the agreement be silent on the subject, the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations, 1948, will apply, it may not always be easy to say on which party (if indeed on either) they impose a duty to repair a sea wall. Under reg. 1 the landlord is to execute all repairs and replacements to, *inter alia*, " walls of open and covered yards and garden walls " ; reg. 5 obliges the tenant, except in so far as such liabilities fall to be undertaken by the landlord under the earlier regulations, to repair and keep and leave clean and in good tenantable repair, order and condition the farmhouse, cottages and farm buildings with, *inter alia*, all fences and all field walls. Normally, no doubt, a sea wall would be a " field " wall ; but it might conceivably be a wall of a yard.

The question whether a tenant sued on his agreement can ever successfully plead act of God, or frustration, in such cases as have been envisaged is one to which *Paradine* v. *Jane* has for centuries been considered a complete answer, and it is only *obiter dicta* of Lord Simon and Lord Wright in *Cricklewood Property and Investment Trust, Ltd.* v. *Leighton's Investment Trust, Ltd.* [1945] A.C. 221 which may be said to give covenantors a glimmer of hope. But before examining *Paradine* v. *Jane* and its *ratio decidendi*, it may be worth while referring to a somewhat out of the way case which suggests that a tenant of partly flooded land might lay claim to an apportionment of his rent. The case is called *Richards le Taverners* case (35 Hen. VIII), 1 Dyer 56. A tenant who had taken a lease of land and sheep sought " apportionment " when the animals died. The court was divided (ultimately, at a reading, the majority of those taking part appear to have inclined to the view that the tenant had " a good equity " to apportion) ; but what is interesting for present purposes is the simile used by those who were against apportionment : " as if the sea gain upon part of the land leased, or part be burned by wildfire, which is act of God, the rent is not apportionable, but the entire rent shall issue out of the remainder " ; it would be otherwise, it was added, if part were recovered by " elder title." It may be remembered by many that the idea, at least, was adopted by the Landlord and Tenant (War Damage) Act, 1939, ss. 10 (1) (*c*) and 11 (1) (*i*) which provided for the fixing of rent when some but not all war damage had been made good, and part of the land was " capable of beneficial occupation."

The learned author of Rolle's Abridgment (a seventeenth century " Laws of England ") disagreed with the propositions put forward in *Richards le Taverners* case and in his title on " Apportionment " (vol. I, p. 236) he gives, among eight instances of apportionment by act of God, these two : (i) if leased land be " surrounded " by fresh water, there is to be no apportionment ; because the tenant will have the sole right to the fish and the water *and* the land can usually be reclaimed (*per ordinarie intendment regaine arere*) ; but (ii) if by the sea, though the soil remains his, he shares the right of fishing with the public *and* reclamation is normally impossible (*n'est ascun possibility de regainer per ordinarie intendment*). I have italicised the " and " in each case because textbook writers have been known to omit the second reason, which should have an important bearing on the matters under discussion.

So much for apportionment. The leading case on the question of relief against the whole rent is, of course, *Paradine* v. *Jane* (1647), Aleyn 26, in which a farmer, sued for three years' rent, pleaded that he had been expelled from his farm by Royalist troops and kept out of possession from 19th July, 1643, to 25th March, 1646 " whereby he could not take the profits." The defence failed, two reasons again being assigned. The first (and I think that this has always been treated as giving the *ratio decidendi*, and rightly so) was that where the law creates a duty and the party (*a*) is disabled from performing it and (*b*) has no remedy over, the law will excuse him ; but when a party has by his own contract created a duty upon himself, he is bound to make it good, if he may, notwithstanding any accident by inevitable necessity, because he might have provided against it by his contract (the " if he may " certainly seems repugnant, and I do not think that any attempt has been made to exploit this qualification). The second reason is that as the tenant takes casual profits, he must run the risk of casual hazards.

A different remedy was sought by a tenant in a case arising out of the same disturbances some twenty years later (*Harrison* v. *North* (1667), 1 Cas. in Ch. 83), in which the Royalist tenant of a London house, who had left town to join the King at Oxford, had unsuccessfully attempted to negotiate a surrender, after which the house had been requisitioned and used as a military hospital by the Parliamentarians. The device he adopted was a bill in equity, asking the court to restrain his landlord from recovering rent ; this failed, and it was mentioned in argument that some two years earlier, in the unreported case of *Carter* v. *Cummins*, such relief had been refused to the tenant of a wharf which had been carried away " by an extraordinary flood " (whether salt or fresh water was not stated).

It should be borne in mind that in none of these cases was frustration mooted ; *Paradine* v. *Jane* was just an action for debt. Nevertheless, the principles laid down in the judgment would cover a plea of frustration. But the " glimmer of hope " provided by *Cricklewood Property and Investment Trust, Ltd.* v. *Leighton's Investment Trust, Ltd.*, to which I have referred relates to frustration only, and if any tenant of temporarily flooded land be found to be indulging in wishful thinking as a consequence of having heard of Viscount Simon's and Lord Wright's reservations, it will be necessary to explain to him exactly how far the *dicta*, weighty as they are, go. It is true the former, which I will cite, actually gives us a hypothetical example of which the sea is the important feature : " . . . I am not prepared to deny the possibility [of frustration] if, for example, some vast convulsion of nature swallowed up the property altogether, or buried it in the depths of the sea. The lease, it is true, is of the ' site,' but it seems to be not inconceivable that, within the meaning of the document, the ' site ' might cease to exist." It will be seen that, considerable and disastrous as the recent floods have been, it would be difficult to establish, even in the case of the ordinary yearly agricultural tenancy, that (to adopt Lord Simon's own definition of " frustration " given earlier in his speech) they constituted " an intervening event or change of circumstances so fundamental as to be regarded by the law as both striking at the root of the agreement and as entirely beyond what was contemplated by the parties when they entered into the agreement." It might be less difficult to argue that it applied to the case of a lease of some building ; but even then, it should be noted that the example speaks of swallowing up and burial rather than of damage or destruction, so it seems right to say that non-receding floods were contemplated. Incidentally, one wonders whether Serjeant Rolle would have agreed that if reclamation be impossible the tenant might, without reference to public fishing rights, simply plead eviction by title paramount, basing his contention on the rule that the foreshore is the property of the Crown but may shift (*Scrutton* v. *Brown* (1825), 4 B. & C. 485).

R. B.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

Survey of Public Rights of Way

Notices of the preparation by surveying authorities of draft maps and statements under s. 27 of the above Act continue to increase in number, and accordingly the summary of the present position given in the table below may be found useful. Information as to the publication of subsequent notices will appear in these columns from time to time.

Surveying Authority	Districts covered by draft map and statement	Date of notice	Last date for receipt of representations or objections
Berkshire County Council	East Berkshire: Maidenhead, New Windsor, and Wokingham Boroughs; Cookham, Easthampstead, Windsor, and Wokingham Rural Districts	13th December, 1952	25th April, 1953
Cambridgeshire County Council	Administrative County of Cambridge	28th November, 1952	1st April, 1953
Cumberland County Council	Workington Borough; Cockermouth, Keswick, and Maryport Urban Districts; Cockermouth Rural District	28th November, 1952	1st April, 1953
Darlington County Borough Council	County Borough of Darlington	30th October, 1952	31st March, 1953
Durham County Council	Administrative County of Durham	12th December, 1952	20th April, 1953
East Suffolk County Council	Lowestoft and Southwold Borough; Lothingland Rural District	5th March, 1952	31st July, 1952
	Modified as regards Lothingland by later notice	7th January, 1953	[15th February, 1953]
	Samford Rural District	1st January, 1953	18th May, 1953
Gloucestershire County Council	Cheltenham Borough	3rd December, 1952	30th April, 1953
	Cheltenham Rural District	3rd and 15th December, 1952	30th April, 1953
	Cirencester Rural District	3rd December, 1952	30th April, 1953
	Cirencester Urban District	3rd December, 1952	30th April, 1953
	Newent Rural District	3rd and 15th December, 1952	30th April, 1953
	North Cotswold Rural District	3rd December, 1952	30th April, 1953
	Tetbury Rural District	3rd December, 1952	30th April, 1953
	Tewkesbury Borough	3rd December, 1952	30th April, 1953
Hampshire County Council	See Southampton County Council		
Herefordshire County Council	County of Hereford	12th December, 1952	31st May, 1953
Huddersfield County Borough Council	Huddersfield County Borough	12th November, 1952	31st March, 1953
Isle of Wight County Council	County of the Isle of Wight	4th December, 1952	15th June, 1953
Kent County Council	Administrative County of Kent, except Penge and Sheerness Urban Districts and developed parts of certain boroughs and other urban districts	8th January, 1953	25th July, 1953
Leicester County Council	Area of the Council	Not dated	9th July, 1953
County Council of Lincoln, Parts of Holland	Area of the Council	16th December, 1952	30th June, 1953
Manchester City Council	City of Manchester	23rd December, 1952	1st May, 1953 (first post)
Merioneth County Council	Area of the Council	18th December, 1952	22nd May, 1953
Monmouthshire County Council	Area of the Council	16th December, 1952, and 13th January, 1953	13th May, 1953
Newport County Borough Council	Newport County Borough	13th January, 1953	1st June, 1953
Northampton County Council	Brackley Borough	6th January, 1953	30th May, 1953
	Brackley Rural District	6th January, 1953	30th May, 1953
	Towcester Rural District	6th January, 1953	30th May, 1953
Northumberland County Council	Berwick-upon-Tweed, Morpeth, and Wallsend Boroughs; Alnwick, Gosforth, Newbiggin-by-the-Sea, and Newburn Urban Districts	8th December, 1952	30th April, 1953
Preston County Borough Council	Indicated on a plan at the office of the Borough Engineer and Surveyor, Municipal Building, Lancaster Road, Preston	9th December, 1952	9th April, 1953
Rutland County Council	All lands in the County of Rutland	9th December, 1952	18th April, 1953
Southampton County Council	Droxford Rural District	January, 1951	9th June, 1951
	Modified by later notice	30th May, 1952	[18th July, 1952]
	Petersfield Urban and Rural Districts	September, 1951	30th January, 1952
	Modified by later notice	26th June, 1952	[8th August, 1952]
	Aldershot Borough; Farnborough and Fleet Urban Districts; Hartley Wintney Rural District	29th February, 1952	11th July, 1952
	Modified by later notice	1st January, 1953	[6th February, 1953]
	Alton Urban and Rural Districts	April, 1952	30th August, 1952
	Modified by later notice	5th January, 1953	[13th February, 1953]
	Gosport Borough; Fareham Urban District	October, 1952	7th March, 1953
	Basingstoke Borough and Rural District	November, 1952	31st March, 1953
	City and Rural District of Winchester, excluding the central area of Winchester	January, 1953	23rd May, 1953
Surrey County Council	Administrative County of Surrey	29th April, 1952	8th September, 1952
	Modified by later notice	7th January, 1953	[15th February, 1953]
Warwickshire County Council	Nuneaton Borough; Bedworth Urban District; Atherstone, Meriden, and Tamworth Rural Districts	16th December, 1952	1st May, 1953
West Riding of Yorkshire County Council	Administrative County of the West Riding of Yorkshire, except a portion of the area of Keighley Borough	23rd January, 1953	20th June, 1953
West Suffolk County Council	Sudbury Borough; Hadleigh Urban District; Clare and Thedwastre Rural Districts	12th December, 1952	24th April, 1953
West Sussex County Council	Arundel Borough; City of Chichester; Bognor Regis Urban District; Chichester Rural District	27th September, 1952	6th February, 1953
	(1) Worthing Borough, Shoreham-by-Sea Urban District; parts of Littlehampton and Southwick Urban Districts; Worthing Rural District. (2) Chanctonbury Rural District	30th October, 1952	10th March, 1953
	Horsham Urban District; Horsham, Midhurst, and Petworth Rural Districts	5th December, 1952	15th April, 1953
Westmorland County Council	The parishes of Helsington, Heversham, Hincaster, Levens, Lupton, Milnthorpe, Natland, Old Hutton and Holmescales, Preston Patrick, Preston Richard, Sedgwick, and Stainton in the South Westmorland Rural District	18th March, 1952	23rd July, 1952
	Modified by later notice	6th August, 1952	[10th September, 1952]
	Part of Kendal Borough; Windermere Urban District; South-Westmorland Rural District (excluding the parishes named in the notice of 18th March, 1952, above)	10th December, 1952	30th April, 1953
Wiltshire County Council	Amesbury, Bradford and Melksham, Cricklade and Wootton Bassett, Devizes, Malmesbury, Marlborough and Ramsbury, Mere and Tisbury, and Pewsey Rural Districts	12th December, 1952	16th June, 1953
Worcestershire County Council	Stourbridge Borough, Bromsgrove Urban District; Bromsgrove Rural District	13th June, 1952	31st October, 1952
	Modified by later notice	2nd February, 1953	[15th March, 1953]
	Malvern and Redditch Urban Districts; Upton-upon-Severn and Pershore Rural Districts	7th November, 1952	30th March, 1953

In addition a *provisional* map and statement has been announced by Worcestershire County Council, covering Droitwich Borough and Rural District, in respect of which applications to quarter sessions under s. 31 of the 1949 Act would now be out of time.

N.B.—Dates in square brackets refer to the last date for receipt of representations or objections in respect of *modifications only*.

HERE AND THERE

THE RESPONSIBLE DOG

In his book on "The English People" George Orwell says that in Britain there are a million and a half fewer children than in 1914 and a million and a half more dogs. When Parliament comes to consider the report of the Committee on the Law of Civil Liability for Damage done by Animals, it will have to have very careful regard to the possible repercussions of any estrangement of so large and so increasingly influential a body. At present, like pre-suffrage woman, they exercise their public influence by private contact, through hearthrug or eiderdown conferences (according to size), by the light in their great adoring eyes or by psychological blackmail or nuisance value. Let no political theorist assert that putting a cross on a ballot paper constitutes a more effective assertion of woman's ego, but she's taken over that method too, for what it's worth. So it is idle to imagine that the active and intelligent creatures who have now converted the empty cradles and cots to their own uses as kennels and sleeping-boxes will much longer stay content with mere fireside and larder door influence over the creatures who are so inappropriately regarded in law as their lords and masters. Like those former theoretical "chattels"—the women—the dogs, in the irresistible logic of progress, must soon make their mark in politics and public life. A Dogs' Education Act, properly conceived, compulsorily enforced and generously administered, should go a long way towards diminishing the incidence of illiteracy, which is a heritage from the callous and indifferent past. In an age uniquely tormented by a sense of guilt and the prickings of a social conscience there is no limit to the extent to which human beings may be goaded forward, in the eloquent words of a late revered statesman, "up and up and up and on and on and on." Retrograde, reactionary, romantic and obscurantist dogs may object that a charter of citizenship would bring in its train restraints and responsibilities fatal to the old carefree enjoyments of go as you please, bark and the world barks with you, follow your nose from pillar-box to lamp-post, up and down the City Road and over the Downs so free. But we all know that that won't do. Planned economy is the thing whereby none shall starve and none shall have more than his fair share, no two-stomached monster devour the common dog's portion, no hereditary aristocrat from the House of Cruft's loll in privileged idleness. All this must be, even if it means converting all the world into one vast Battersea Dogs' Home.

VANISHING FREEDOMS

But even if they do not claim their progressive rights, the dogs of Britain are unlikely to retain the privileges of their ancient freedoms. The recommendations of the commission presided over by the Lord Chief Justice and comprising among its members a Lord of Appeal in Ordinary and two High Court judges would, if implemented, confine them within the narrow bounds of human standards of good behaviour. It is true that, since the subject-matter of the inquiry was limited to civil liability, there is no suggestion of a resort to flogging or birching as a deterrent to prevent dogs from following the uninhibited course of nature and getting rid of their repressions, but the entire document breathes a spirit of coercion and regimentation calculated to make every dog owner either a gaoler or a common informer against his four-footed friend, so that no longer will he be able to look candidly into the trustful gaze of Rover fresh from the exhilaration of biting his first old lady or the amusement of making a horse shy and throw its rider. His Rover's little sports may involve him in liability for several hundred pounds in damages, and it is inevitable that a shadow will be cast over a relationship hitherto sunny in the assurance that anyone who was so unfortunate as to suffer damage by reason of Rover's indulgence in his natural propensities had to get over several very awkward legal hurdles before attaining a judgment for damages. Honest as the day, Rover is traditionally unrestrained alike in matter and manner in his mode of address to persons who do not happen to take his fancy. Righteous in his ineradicable conviction that only the wicked are apprehensive, he is (so those who understand him best assure me) only likely to bite when his nose is offended by the stink of fear; but as, apparently, he is not equal to the imaginative effort of visualising the effect on an unaggressive human being of the menacing approach of, say, an enormous and sinister-looking Alsatian, he is unlikely to discriminate between guilty intent frustrated and innocent nervousness surprised. If the recommendations of the committee are adopted, Rover's master and, through him, Rover are going to find their hitherto almost unassailable position in law gravely prejudiced. A farmer will be allowed to shoot trespassing dogs if he reasonably believes that cattle or poultry have been or will be injured by them. The distinction between wild and tame animals will be abolished, between elephants, monkeys and wolves on the one hand and camels, bulls and dogs on the other. No longer will a person injured by a dog be required to prove that the owner knew it was vicious; the onus will be on the owner to show that he acted without negligence. If a person takes a neighbour's dog for a walk he will become in law responsible for its conduct while supposedly under his control. There may even be compulsory third party insurance for dogs as for cars, since the committee has been much impressed by the number of road accidents caused by dogs. Well, Rover and his friends had better get together and talk over all this in a practical and up-to-date spirit in terms of pressure groups, charters of canine rights, political emancipation. With all this worry, it's a man's life for a dog these days.

Richard Roe.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

COURT OF APPEAL

COUNTY COURT: APPLICATION FOR NEW TRIAL: JUDGE'S DISCRETION

Grimshaw *v.* Dunbar

Jenkins and Morris, L.JJ., and Roxburgh, J. 16th January, 1953

Appeal from Bromley County Court.

The plaintiff, as landlord, brought an action against the defendant, as tenant of certain rent restricted premises, to recover possession on the ground that the tenant was in arrear with his rent. On 30th June, 1952, three days before the hearing of the summons, the tenant attended at the county court and paid the arrears of rent in full into court. He alleged that, when he made that payment in, an official at the court told him that it would not be necessary for him to attend at the hearing since the summons would be dismissed by reason of the payment in. On the summons coming on for hearing, on 3rd July, in the tenant's absence, the judge, after hearing the landlord's evidence, made an order for possession to be given on 3rd November, 1952. Notice of that order having been served on the tenant, he applied under the County Court Rules, 1936, Ord. 37, r. 2, for a new trial. That application was dismissed on 28th October without, apparently, considering any evidence and without stating the judge's reasons for refusing the application. The tenant appealed.

Jenkins, L.J., said that *prima facie* a party to an action was entitled to have it heard in his presence, and if, by accident or mischance, he was absent at the hearing, an order being made in his absence, he should be allowed to come to court and present

his case, if that could be done without injustice to other parties. The judge had a discretion under Ord. 37, r. 2, whether to grant an application for a new trial; but here he had exercised it in a way which involved a miscarriage of justice. In *Dick* v. *Piller* [1943] 1 K.B. 497 that was held necessarily to involve an error of law—which would be appealable within s. 105 of the County Courts Act, 1934. His lordship summarised the considerations which should be taken into account in considering an application for a new trial [see [1953] 2 W.L.R., p. 337], and held that, on those matters as related to the facts, the judge ought to have granted a new trial.

MORRIS, L.J., and ROXBURGH, J., agreed. Appeal allowed.

APPEARANCES: *J. Sofer* (*H. E. Thomas & Co.*); *E. Dennis Smith* (*Weller & Birrell*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [2 W.L.R. 332

HUSBAND AND WIFE: COUNTY COURT JURISDICTION: APPLICATION FOR ARREARS OF MAINTENANCE WHILE DIVORCE PROCEEDINGS PENDING: APPLICATION UNDER MARRIED WOMEN'S PROPERTY ACTS

Hickson *v.* Hickson; Same *v.* Same

Jenkins and Morris, L.JJ., and Roxburgh, J.
16th January, 1953

Appeal from Gateshead County Court.

These two actions, in both of which the plaintiff was the wife and the defendant the husband, came on for hearing together. The parties were married in 1941, but in 1952 they agreed to separate. By a separation agreement dated 11th July, 1952, the husband agreed to pay to the wife "so long as the wife shall remain chaste" £3 per week for the maintenance of herself and the child of the marriage. In the first action the wife, alleging that the husband had in fact failed to make any payments under the agreement, claimed payment of arrears of the weekly sums payable thereunder between 12th July and 11th October, 1952 (£35). The husband denied liability, alleging that the wife had not remained chaste. The wife also brought proceedings under the Married Women's Property Acts with regard to a house which she alleged was purchased by her and the husband jointly, and as to the ownership of certain furniture. Both these actions were heard on 4th November, 1952, and on the same day the wife was served with the husband's petition for divorce on the grounds of the alleged adultery. At the hearing an application was made for the husband to have both actions adjourned pending the hearing of the divorce proceedings. The county court judge offered to allow the adjournment of the action for arrears of maintenance if the amount claimed as arrears of the wife's maintenance was paid into court and if the amount due for the child was paid. The husband, while he accepted the terms relating to the wife, would not agree to pay the full sum due for the maintenance of the child. The judge then decided not to allow the adjournment and heard the two actions. No evidence of the wife's adultery was given. The judge gave judgment for the wife on her claim for £35, and on the second summons he directed that the house and the furniture, and effects in it, should be sold and the proceeds of sale divided between the husband and wife equally. The husband did not appeal against the decisions in the two actions, but he appealed against the refusal of the judge to adjourn the hearing pending the determination of the divorce proceedings.

MORRIS, L.J., delivering the first judgment, said that in courts of summary jurisdiction the practice was to stay proceedings if there was an issue as to adultery pending before the High Court (a practice followed since *Knott* v. *Knott* [1935] P. 158 and *Higgs* v. *Higgs* [1935] P. 28), but that, however, was not conclusive guidance as to the practice in a hearing for arrears of maintenance in the county court—a civil action for debt. The judge was not bound to accede to the application for adjournment; he had a discretion and there was no error of law on his part in refusing it. As regards the adjournment of the other proceedings, the same considerations applied, and further, it was difficult to see how the conduct of the wife during marriage could be relevant in considering questions of ownership of property, for her rights did not depend on her conduct.

JENKINS, L.J., and ROXBURGH, J., agreed. Appeals dismissed.

APPEARANCES: *Bruce Campbell* (*Gibson & Weldon*, for *Thomas Magnay*, Gateshead); *T. M. Easthan* (*Isadore Goldman & Son*, for *Crute and Sons*, Newcastle-upon-Tyne).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [2 W.L.R. 308

INCOME TAX: LIABILITY TO TAX (SCHEDULE A) WHERE NO APPEAL TO COMMISSIONERS AGAINST ASSESSMENT

Inland Revenue Commissioners *v.* Pearlberg

Denning and Morris, L.JJ. 19th January, 1953

Appeal from Havers, J.

From 1945 onwards the defendant, Harry Hyman Pearlberg, was notified of assessments made on him under r. 8 of No. VII of Sched. A to the Income Tax Act, 1918, as the landlord of a number of small properties in the Manchester division. He did not appeal against those assessments within the period of twelve months allowed by para. 6 (3) of Sched. X to the Finance Act, 1942; nor did he pay the tax. He was also charged under s. 12 of the Finance Act, 1941, in respect of certain other properties in the same district as being the landlord, a notice having been duly served on him under para. 1 of Sched. I of the Act to 1941, and, again, he took no steps either to dispute the assessment or to pay the tax. In 1952, the Commissioners issued a writ claiming £438 1s. for the tax alleged to be due and then, for the first time, the defendant sought to contest the assessments on the ground that he was not the person chargeable. Havers, J., confirmed an order of Master Diamond that the Commissioners be at liberty to sign final judgment against the defendant for the amount endorsed on the writ, but the defendant appealed.

DENNING, L.J., said that the right way for the defendant to have challeged the assessments was by appeal to the Commissioners as provided by the Income Tax Acts, and that, not having done that, it was not open to him to challenge the charge. As regards the properties in respect of which he had been notified as "landlord" there was now a "conclusive presumption" against him (by virtue of the Finance Act, 1941, Sched. I, para. 5) that he was the "landlord", and as regards the remainder of the properties, once there was an assessment duly made and not appealed against, then under s. 169 of the Income Tax Act, 1918, the tax charged could be sued for and recovered. If there was no appeal to the Commissioners, the debts became absolute and conclusive and their legal effect could not be denied.

MORRIS, L.J., agreed. Appeal dismissed.

APPEARANCES: *Cyril King*, Q.C., and *Desmond Miller* (*Warren and Warren*); *Sir Reginald Hills* (*Solicitor of Inland Revenue*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R. 331

LANDLORD AND TENANT: CLAIM FOR NEW LEASE OR COMPENSATION: "PREDECESSORS IN TITLE"

Pasmore *v.* Whitbread & Co., Ltd.

Denning and Morris, L.JJ., and Roxburgh, J.
20th January, 1953

Appeal from Bromley County Court.

In 1946 one *F* took a quarterly tenancy of a garage adjoining a public house owned by the defendants. In 1949 the plaintiff negotiated with *F* to buy the business. The defendants refused to allow *F* to assign his lease, but were prepared to grant a new quarterly lease to the plaintiff. The plaintiff bought the business from *F*, paying a substantial sum for goodwill, and took a quarterly lease from the defendants. In November, 1951, the defendants served a notice to quit on the plaintiff, who claimed compensation for goodwill or a new lease under the Landlord and Tenant Act, 1927. By s. 4, such a claim may be made by a tenant who "proves . . . that by reason of the carrying on by him or his predecessors in title at the premises of a trade or business for a period of not less than five years goodwill has become attached to the business . . ." By s. 25 "the expression 'predecessor in title' in relation to a tenant or landlord means any person through whom the tenant or landlord has derived title . . ." The court held that *F* was not the "predecessor in title" of the plaintiff, so as to bring him within the terms of the section by aggregating the two successive tenures to more than five years, as the expression related to the premises and not to the business. The plaintiff appealed.

DENNING, L.J., said that the sole question was whether *F* was the plaintiff's predecessor in title within the meaning of the Act. It was pointed out during the argument that the expression must have the same meaning in relation to a tenant as in relation to a landlord; in relation to a landlord it referred to the property, not the business, so that that was its natural meaning in relation to a tenant also; that also was the meaning attributed to the expression by Evershed, M.R., in *Williams* v. *Portman* [1951] 2 K.B. 948; 95 SOL. J. 576. *F* was not the

plaintiff's predecessor in title in relation to the premises. It was unfortunate, but there was no escape from the wording of the Act. Appeal dismissed.

MORRIS, L.J., and ROXBURGH, J., agreed.

APPEARANCES: *Percy Lamb, Q.C.*, and *N. R. King* (*Vivash Robinson & Co.*); *Rodger Winn* and *A. C. Warshaw* (*Martineau and Reid*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 359

LANDLORD AND TENANT: LEASEHOLD PROPERTY (TEMPORARY PROVISIONS) ACT, 1951: FORM OF APPLICATION FOR NEW LEASE

Osborne *v.* Snook

Somervell, Birkett and Romer, L.JJ. 20th January, 1953

Appeal from Poole County Court.

The applicant applied in due time under s. 10 of the Leasehold Property (Temporary Provisions) Act, 1951, for the grant of a new tenancy of a shop and certain living accommodation. The judge, on the submissions of the landlord, dismissed the application on the ground that the particulars given in the application did not comply with Form 342A appended to Ord. 40A of the County Court Rules, 1936, as amended in 1951, so that the application was bad in form. He also refused permission to amend. The Act provides that an application must be lodged within one month of the expiration of the tenancy. The rules prescribe that the form in the appendix should be used in cases applicable, with such variations as might be required. The form specified a number of particulars to be given. The application in suit failed to comply with the form, in that it did not set out (1) as required by para. (*h*) (i) and (ii) of the form, the extent of the living accommodation and whether it was occupied for the purposes of persons concerned in the business of the shop; (2) as required by para. (*k*), "the period, rent, and other terms and conditions" applied for in the new tenancy. The applicant appealed.

SOMERVELL, L.J., said that the landlord had contended that strict compliance with the form was a condition precedent, but there was nothing in the rules to support such a construction. The Act provided that there must be an application, which, in ordinary language, was an application for a new lease under the Act; and the document in suit came within that definition. The nearest analogy was provided by *Hanily* v. *Minister of Local Government and Planning* [1951] 2 K.B. 917; 95 SOL. J. 577, which was concerned with the Acquisition of Land (Authorisation Procedure) Act, 1946. There, a person aggrieved had to apply to the court within six weeks to discharge a compulsory purchase order. Application was made within due time, but after that it was sought to amend the application by adding a new ground of objection, and Cohen, L.J., said that the amendment could be made out of time, provided that the original application clearly raised the question of the invalidity of the order in question. Although there the Act and the wording were different, the conclusion was that the judge below was wrong in treating the application as a nullity. He had jurisdiction to consider, and should have considered, whether he should give leave to amend. The appeal should be allowed by granting leave to amend the application, and remitting the matter for re-hearing to the county court, with costs against the applicant, so far as the original hearing and the amendment were concerned.

BIRKETT, L.J., agreed.

ROMER, L.J., agreeing, said that the particulars to be given in the form were in many cases unimportant and already known to the landlord. It could not be thought that the Rules Committee intended that the inclusion of such unimportant matters of detail were to be treated as conditions precedent. Appeal allowed.

APPEARANCES: *E. S. Fay* and *P. Back* (*Church, Adams, Tatham & Co.*, for *Trevanion & Curtis*, Poole); *J. T. Molony* (*Barnes & Butler*, for *J. W. Miller & Son*, Poole).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 322

BANKRUPTCY PETITION: EXTORTION BY CREDITORS NO BAR TO COMMITTAL OF DEBTOR

***In re* a Judgment Summons (No. 25 of 1952); *ex parte* Henleys, Ltd.**

Evershed, M.R., Jenkins and Morris, L.JJ. 26th January, 1953

Appeal from Harman, J.

On 25th April, 1951, judgment was given against a debtor for a sum which, with costs, amounted to £449. A bankruptcy notice was served in respect of that debt and was withdrawn upon the terms of an immediate payment of £100, the balance to be paid by monthly instalments of £50. After the first £100 had been paid, the creditors' solicitors wrote requiring payment of twelve guineas in respect of the additional costs of the bankruptcy notice. The debtor's solicitors, under protest, paid those costs. The debtor having failed to keep up the instalments, a bankruptcy petition, pursuant to a further bankruptcy notice, was presented against him. That petition was dismissed on 2nd May, 1952, by the registrar on the ground that the demand and payment of the twelve guineas costs was not justified by the bankruptcy notice and constituted "extortion" which barred the presentation of a bankruptcy petition on the debt to which the extortion related. There was no appeal against that order. The debtor having made no further payments, on 8th August, 1952, a judgment summons was issued in respect of the same debt under s. 5 of the Debtors Act, 1869. The application was heard by Harman, J., on a preliminary point, without going into the merits. He said that, in exercising the jurisdiction of the court under s. 5 of the Debtors Act, 1869, he ought to be guided by the analogous bankruptcy principle, and, therefore, in the exercise of his discretion, he must hold that the extortion which barred a petition in bankruptcy also barred the judgment summons. He, therefore, dismissed the summons on the preliminary objection. The creditors appealed.

JENKINS, L.J., delivering the first judgment, said that the dismissal of the bankruptcy petition on the ground of extortion did not have the effect of extinguishing the judgment debt, but merely disqualified the judgment creditors from presenting a bankruptcy petition founded upon it. They still had a valid unsatisfied judgment in payment of which the debtor had made default. *Prima facie*, therefore, the judge had jurisdiction to make an order under s. 5 of the Debtors Act, 1869. It had been submitted that s. 107 (4) of the Bankruptcy Act, 1914, had a limiting effect on s. 5 of the Debtors Act, 1869, but that was incorrect. Unless and until converted into bankruptcy proceedings, properly so called, by an order under s. 107 (4) of the Bankruptcy Act, 1914, proceedings under s. 5 of the Debtors Act, 1869, were wholly distinct and different from bankruptcy proceedings properly so called in nature, object and effect. The administrative links between proceedings under the Acts did not afford sufficient reason for holding that circumstances which disqualified a creditor from presenting a bankruptcy petition automatically precluded him from proceeding under s. 5 of the Act of 1869. The objection that the court had no jurisdiction therefore failed. Secondly, the jurisdiction under s. 5 of the Act of 1869 was discretionary, and the court was not bound to refuse to entertain proceedings at the instance of a judgment creditor merely because a bankruptcy petition presented by him in respect of the same debt had been, or in the view of the court would have been, dismissed on the ground of "extortion" in the sense in which that expression was used in bankruptcy cases (see *In re Shaw* (1901), 83 L.T. 754, and *In re a Debtor* (No. 883 of 1927) [1928] 1 Ch. 199). Different considerations from those applicable in bankruptcy cases applied in the entirely distinct procedure under s. 5. That section applied where there had been an order for payment on which there had been a default; it was a matter between the court and the debtor whether he merited punishment, and though no doubt from the judgment creditor's point of view the summons afforded a means of enforcing payment of the debt, that was not the issue in law. Harman, J., was wrong in holding that he must, having regard to the bankruptcy rule, exercise his discretion adversely to the creditors.

MORRIS, L.J., and EVERSHED, M.R., agreed. Appeal allowed, and case remitted to be considered on its merits.

APPEARANCES: *Patrick O'Connor* (*Hewitt, Woollacott and Chown*); *Claude Duveen* (*Isadore Goldman & Son*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [2 W.L.R. 316

CHANCERY DIVISION

COMPANY: PURCHASE OF LAND IN CONSIDERATION OF ISSUE OF SHARES AND DEBENTURES IN EXCESS OF AMOUNT PRESCRIBED

London and Country Commercial Properties Investments, Ltd. *v.* A.-G.

Upjohn, J. 23rd January, 1953

Originating summons.

The Borrowing (Control and Guarantees) Act, 1946, provides by s. 1 that: "(1) The Treasury may make orders for regulating

. . . the following transactions . . . (*a*) the borrowing of money " when the aggregate borrowings within twelve months exceed £10,000; " (*b*) the raising of money . . . by any body corporate " by the issue of shares " (*c*) the issue . . . (i) . . . of shares . . . or debentures or other securities . . ." By s. 4 (2), " Any reference in this Act to the borrowing of money—(*a*) includes a reference to the making of any arrangement by which a sum which would otherwise be payable at any date is payable at a later date, and includes in particular the making of any arrangement by which the whole or any part of the price of any property is allowed to remain unpaid . . ." By the Schedule to the Act, very substantial penalties were exacted for contraventions. The Control of Borrowing Order, 1947 (made by virtue of the power conferred by the Act), provides by art. 1: " (1) . . . a person shall not without consent of the Treasury, borrow money " in excess of £10,000 in any one year. By art. 2, " borrowing of money " is defined in terms substantially identical with those of s. 4 (2) of the Act. The plaintiff company proposed to carry out a transaction whereby they were to purchase from another company a number of freehold and leasehold properties in consideration of the issue of £400,000 in ordinary shares and £750,000 in debenture stock redeemable in 1980 at the latest. Before completing the transaction, this summons was taken out to ascertain whether the proposals contravened the statutory provisions set out above.

UPJOHN, J., said that there were serious doubts whether he ought to exercise his powers on a construction summons to decide a matter which properly fell to be decided by the criminal courts; but as all parties asked for his determination, he would give it, though it would not bind the criminal courts. The transaction was simple. Section 4 (2) of the Act contained no prohibition against the issue of " securities," i.e., shares or debentures, in such a transaction. As to the principles of construction applicable, this was about the high-water mark of legislative interference with the rights of the subject, as all officers and servants of an offending company were deemed guilty unless they proved the contrary, and showed that they had exercised due diligence to prevent the commission of the offence. In these circumstances, as was said in *Tuck & Sons* v. *Priester* (1887), 19 Q.B.D. 629, a reasonable interpretation, which would avoid a penalty, should be adopted. Also, a person could arrange his affairs so as to avoid taxes or penalties, and a statute imposing such must fairly and squarely, according to its natural meaning, hit the transaction (*St. Aubyn* v. *A.-G.* [1952] A.C. 15. What the Act aimed at was borrowing further money to repay existing creditors, so that the transaction must be one whereby the price of the property was to remain unpaid. It was conceded that " price " must refer to a strictly cash transaction, so that to fall within the Act there must be sale for cash, which was to remain unpaid. The transaction in suit was plainly to be satisfied by the issue of securities, and the Act and order plainly distinguished between the issue of securities and the borrowing of money. There was no cash consideration in the present transaction, and no money was being allowed to remain unpaid; to hold otherwise would be to put an unnatural construction on the enactments. The transaction involved the issue of securities under which sums became payable from time to time under the terms of the issue. That was not " allowing money to remain unpaid," and the Treasury case failed. Judgment for the plaintiffs.

APPEARANCES: *J. B. Lindon*, Q.C., and *K. B. Suenson-Taylor* (*Linklaters & Paines*); *Denys Buckley* (*Treasury Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 312

PURCHASE TAX: POSTER STAMPS GIVEN AWAY WITH GOODS: PICTORIAL COUPONS: LIABILITY TO TAX

Stephenson Bros., Ltd. *v.* Commissioners of Customs and Excise

King & Jarrett, Ltd. *v.* Same

Roxburgh, J. 28th January, 1953

Actions.

Stephenson Brothers, Ltd., plaintiffs in the first action, were manufacturers of furniture cream and floor polish. By a licence agreement dated 27th October, 1950, Walt Disney Mickey Mouse, Ltd., authorised them, for a period of two years from 1st October, 1950, to affix to certain goods sold by them poster stamps bearing pictorial representations of characters from the licensors' film " Cinderella." A substantial lump sum payment was made in consideration of the licence, the amount of which is not here relevant. Stephensons adopted three methods of obtaining the stamps. The first was by an order in January, 1951, for the printing of 10,000,000 stamps by King & Jarrett, Ltd., the plaintiffs in the second action. King & Jarrett, Ltd., received this order through a firm which acted as agents for Stephensons. A second order by Stephensons was made direct to King & Jarrett for 100,000 stamps; it was conceded that that transaction stood on the same footing as the first transaction. The third method was that 500,000 stamps were printed by Stephenson Brothers themselves. The stamps, apart from bearing pictorial figures described in the licence, bore a number prominently upon the face. The numbers ran from 1 to 12. On the back of each pictorial stamp were written instructions how to obtain a picture book on sending a set of stamps numbered 1 to 12. This book was connected with copyright characters which were the subject of the licence. A small number of the stamps was put inside a folder which was attached to containers of floor polish and furniture cream by transparent tape. These goods were supplied by Stephensons to retailers who supplied them to the public generally. The Commissioners of Customs and Excise notified Stephensons that purchase tax would be demanded on these poster stamps on the ground that they were " pictures " of a kind produced in quantity for general sale within the meaning of group 25 of the Eighth Schedule to the Finance Act, 1948. The plaintiffs in both actions asked for a declaration that the poster stamps were not goods chargeable with purchase tax. In the first action Stephensons, by their amended statement of claim, also asked for a declaration that the 500,000 stamps printed by them were not choses in action.

ROXBURGH, J., said that the first question was whether these stamps were goods at all. He had thought at one time that they might be choses in action; on further consideration he did not think that that was a possible view, and that each stamp was no more than an offer of a contract. The main point was whether these poster stamps were pictures of a kind produced in quantity for general sale. One thing was clear, they were not exclusively pictures; they operated as something more. But that was not fatal to the Crown's case; if there were a dual purpose article it would not cease to be a picture because it was also sold for some other purpose. In his judgment, this was a pictorial coupon, and a pictorial coupon might be a picture or it might not. It depended upon the facts of each particular case; these were definitely dual purpose stamps, one of the purposes of which was to entertain by these cartoons. That, of course, was the normal purpose of a cartoon, and normally a cartoon was a picture within group 25; thus, so far they were pictures. On the other hand, they were plainly coupons; but the pictorial element was so important in the particular circumstances of this case that they were, in his judgment, pictures, and none the less so because at the same time they were coupons. Therefore both these actions failed.

APPEARANCES: *John Clements* (*Ward, Bowie & Co.*, for *A. V. Hammond & Co.*, Bradford); *J. P. Ashworth* (*M. G. Whittome*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [1 W.L.R. 335

MORTGAGE: ATTORNMENT: EFFECT ON CLAIM FOR POSSESSION

Hinckley and Country Building Society *v.* Henny

Upjohn, J. 3rd February, 1953

Procedure summons.

By a legal charge a mortgagor covenanted with the applicant mortgagees that he " hereby attorns tenant to the society " of the premises charged " at the yearly rent of sixpence if demanded. (2) Provided that the society may [in the event of default] by giving to the borrower . . . at least seven days' notice in writing of the intention of the society so to do determine the tenancy . . ." Default having been made by the mortgagor, the society applied to the court to ascertain whether they were entitled to re-enter without giving seven days' notice. The mortgagor did not appear.

UPJOHN, J., said that it appeared from *Jolly* v. *Arbuthnot* (1859), 4 De G. & J. 224, that an attornment clause in a mortgage was designed to give a greater measure of protection to a mortgagor. It might also be designed to give additional advantages to a mortgagee, if the attornment clause reserved a substantial rent; so that an attornment clause was valid and effectual, and a mortgagee who wished to recover possession must give notice in accordance with its provisions. The claim of the plaintiffs to the contrary seemed to be based on the Annual Practice in a note to " Possession " under Ord. 55, r. 5 (*a*) (1952 ed., p. 1128), where it was stated that a summons for possession determined the tenancy, so that it was unnecessary for the mortgagees to prove that they had given a notice to quit, and *Woolwich Equitable*

Building Society v. *Preston* [1938] Ch. 129 was cited as authority. But when that case was examined, it was clear that the attornment clause was in the common form that, when the power of sale had arisen, the tenancy could be determined without previous notice to quit. The present instrument had no such provision that the tenancy could be determined without previous notice; so that the seven days' notice provided must be given if the determination of the tenancy was to be effective. Accordingly, the tenancy had not been determined, and the claim for possession failed. Summons dismissed.

APPEARANCES: *J. A. Plowman* (*Preston, Lane-Claypon and O'Kelly*, for *Pilgrim & Webster*, Hinckley).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 352**

QUEEN'S BENCH DIVISION

PRACTICE NOTE: CASE STATED BY JUSTICES: BELATED APPLICATION FOR RE-STATEMENT

Lord Goddard, C.J., Croom-Johnson and Pearson, JJ.
16th January, 1953

On an appeal by case stated by justices, it appeared that on 7th July, 1952, a court of summary jurisdiction dismissed an information against the respondent charging him with an offence under the Road Traffic Act, 1930. On 22nd September, 1952, the justices, on the application of the prosecution, stated a case which was not sent to the respondent for revision, but he received a copy of it on 30th September, 1952. On the hearing of the appeal objection was taken on behalf of the respondent that material facts were omitted from the case as stated by the justices.

LORD GODDARD, C.J., in a judgment allowing the appeal, said that counsel for the respondent had taken the objection that the case was not properly stated, because the clerk to the justices had asked the prosecution to draft the case but had not sent a draft of it to the respondent for revision. He (Lord Goddard, C.J.) did not think that there was any obligation on the clerk to submit the case to the respondent, though it was done in many cases. If the justices were satisfied that the facts were fully and properly stated in accordance with their findings, no further revision of the case was necessary. If, however, a respondent considered that certain facts which had been found by the justices—not merely some of the evidence which had been called before them—had been omitted in drawing up the case, it was open to him to apply to the Divisional Court for a re-statement of the case, if he produced an affidavit setting out the findings of fact which he alleged to have been omitted. The court would then consider whether they should send the case back to the justices with a request that it should be re-stated if the facts which were alleged to have been found by them and omitted from the case had in fact been found. In the present instance a copy of the case had been in the possession of the respondent or his advisers since 30th September, 1952, but there had been no affidavit alleging that any fact found by the justices had been omitted from the case. The court were not concerned with the evidence given in the case but with the facts found by the justices, and if they were not satisfied that the justices had found, or must have found, certain facts which they had not included in the case, they would not send it back to be amended. Since, in the present instance, the case had been in the hands of the respondent's advisers all those months, the court could not sent it back for amendment on a mere statement on behalf of the respondent that certain facts had been omitted. It was the respondent's duty to act promptly in the matter.

[Reported by PHILIP B. DURNFORD, Esq., Barrister-at-Law] **[1 W.L.R. 334**

FALL OF WORKMAN THOUGH FRAGILE ROOF: COMMON LAW AND STATUTORY DUTY: LOSS OF FUTURE WAGES DUE TO SHORTENING OF LIFE

Harris *v.* Bright's Asphalt Contractors, Ltd.

Slade, J. 20th January, 1953

Action.

The plaintiff, an asphalt spreader employed by the defendants, was, in the course of his employment, kneeling nine inches from the edge of a flat roof of factory premises chipping asphalt from the drip edge when he fell on to a roof on a lower level which was covered with asbestos; the lower roof broke and the plaintiff fell through it more than ten feet on to the floor of the factory below and was seriously injured, his expectation of life being materially shortened. Although the method of doing the work adopted by the plaintiff was the normal method for such work, it could equally well have been done from the safety of boards placed across the asbestos roof. It was admitted that the Building (Safety, Health and Welfare) Regulations, 1948 (S.I. 1948 No. 145), applied to the work on which the plaintiff was engaged. The plaintiff claimed damages from the defendants, alleging that they were in breach of their common law duty to him to provide a safe system of working, and in breach of their statutory duty under regs. 5 and 31 (3) (*a*) of the Building (Safety, Health and Welfare) Regulations, 1948, to provide scaffold and other plant, and under reg. 31 (3) (*b*) to display warning notices, and on his behalf it was submitted, on the authority of *Roach* v. *Yates* [1938] 1 K.B. 256, that in assessing the damages to which he was entitled the loss of future wages which he might have been expected to earn if his life had not been shortened should be taken into account.

SLADE, J., said that, putting it at the lowest, the employers' duty was not to subject their employees to any reasonably foreseeable risk which could have been guarded against by any measures not disproportionate to the risk itself. Applying that test he found that the accident was one which the employers could and should have foreseen, and which could have been guarded against by the simplest possible measures by the use of three or four 9-inch boards placed on the sloping roof. The plaintiff could have performed the work in complete safety, by standing on the planks. Accordingly the action succeeded. He (his lordship) interpreted "scaffold" as defined in reg. 3 to mean that, if boards had been placed on the roof in order to catch anyone who might over-balance, they would not constitute a scaffold within the regulations, but if they had been used to work from, then they would be a scaffold. Therefore, in the sense that had the boards been provided the plaintiff could have done the work from them in safety, there was a breach of the statutory duty imposed by reg. 5. Work "above" a fragile roof in reg. 31 (3) (*a*) meant working over in the sense of higher in the vertical sense than the fragile roof, not merely in the sense of at a greater height. Regulation 31 (3) (*a*), therefore, was inapplicable. There was a breach of reg. 31 (3) (*b*) in that no notice stating that the coverings were fragile had been affixed anywhere at all, but inasmuch as the plaintiff knew that the roof was fragile that breach had no bearing on the accident and his claim failed so far as that regulation was concerned. According to the headnote in *Roach* v. *Yates*, *supra*, the Court of Appeal had said that damages for prospective loss of wages must be based not only on the loss of wages during the plaintiff's actual life but also on the wages which he would have earned during what, but for the accident, would have been his normal life. He had considered the judgments in that case and they did not support that proposition. There were *dicta* in the judgment of Lord Justice Slesser, based on *Phillips* v. *London and South Western Railway Company* (1879), 5 Q.B.D. 78, which appeared to support it, but he, his lordship, regarded the matter as *res integra*. He was unable to find anything in those two cases which laid down the principle that the plaintiff, in a case like this, was entitled to have taken into consideration the wages which he would, but for the accident, have earned after death. He, therefore, would award no general damages under that head, and, in his (his lordship's) judgment, the only relevance of earnings which would have been earned after death was in regard to damages for loss of expectation of life, and they were one of the minor elements which made it seem reasonably possible that the plaintiff would have had a happy life. Judgment for the plaintiff.

APPEARANCES: *J. R. Crichton*, Q.C., and *Leonard Lewis* (*A. L. Philips & Co.*); *F. W. Beney*, Q.C., and *J. L. Elson Rees* (*Kingsbury & Turner*); *A. Gerrard*, Q.C., and *Stephen Chapman* (*L. Bingham & Co.*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[1 W.L.R. 341**

SUMMARY JURISDICTION: EXAMINING MAGISTRATES WITHOUT POWER TO STATE A CASE

Card *v.* Salmon

Lord Goddard, C.J., Croom-Johnson and Pearson, JJ.
21st January, 1953

Case stated by Devizes justices.

The defendant was charged with dangerous driving contrary to s. 11 of the Road Traffic Act, 1930. At the hearing before the justices he elected to be tried by jury. Before the justices had heard any evidence of the facts of the case the defendant's solicitor contended that the defendant had not received the necessary notice of the prosecutor's intention to prosecute

uired by s. 21 of the Road Traffic Act, 1930. The justices nsidered that contention and purported to find that the prosecutor had complied with the provisions of the section. The defendant appealed by way of case stated.

LORD GODDARD, C.J., said that once the defendant had claimed his right to go before a jury, the duty of the justices under s. 17 of the Summary Jurisdiction Act, 1879, was to sit as examining justices, and take the depositions. The point taken by the defendant's solicitor ought never to have been taken before the justices, because it was a point of defence which should have been open to the defendant on the trial for which he himself had elected. When the facts had been gone into, the justices could have dismissed the case under the Indictable Offences Act, 1848, on the ground that there was no *prima facie* case. Examining justices had no power to state a case; a case could only be stated by justices who had power to hear and determine a case, that was to say, to try the case; or by quarter sessions if they had a case on appeal which they had power to try not by jury but as quarter sessions. Justices did not come to any decision when they were sitting as examining justices; they only came to a conclusion whether or not a *prima facie* case had been made out to send for trial. They had power to state a case when they were sitting as a court of summary jurisdiction because their decision was conclusive, subject to appeal, and they were entitled to ask this court whether or not their decision was in accordance with law. The stating of a case, like any other form of appeal, was entirely a matter arising by statute, and once justices considered the case as one that had to go for trial, they were sitting under the Indictable Offences Act, and not under the Summary Jurisdiction Act, 1879.

CROOM-JOHNSON and PEARSON, JJ., concurred.

APPEARANCES: *Norman Skelhorn* (*Darley, Cumberland & Co.*, for *Wansbroughs, Robinson, Tayler & Taylor*, Devizes); *Norman Brodbrick* (*Taylor, Jelf & Co.*, for *Wilson & Sons*, Salisbury).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[2 W.L.R 301**

ORDERS OF CERTIORARI AND PROHIBITION NOT APPLICABLE TO PRIVATE ARBITRATION

R. *v.* National Joint Council for the Craft of Dental Technicians and Others

Lord Goddard, C.J., Croom-Johnson and Pearson, JJ.

22nd January, 1953

Application for orders of certiorari and prohibition.

In 1948 a youth, *N*, was indentured for five years to a dental surgeon to learn the craft of dental mechanics; the indentures provided that all questions or differences should be referred to the respondent council. In 1952 a dispute arose between *N* and his then employers (who had taken over the indenture) which was remitted to the disputes committee of the council. During the arbitration proceedings, the committee made rulings on certain points of law. *N* and his mother applied for and obtained leave of the court to move for prohibition and certiorari against the council and the employers. On the hearing of the substantive applications:

LORD GODDARD, C.J., said that it was possible that the court, when giving leave, thought that the council was a statutory body. It was now shown to be nothing of the sort; it was a non-statutory body acting as arbitrator on a submission brought under a private contract. There was no case known of a prerogative writ going to an arbitrator. An arbitrator could be ordered to state a case; his award could be set aside, and an injunction could be obtained against a purported arbitrator when there was no submission; but prerogative writs applied only to arbitrators set up by statute on whom Parliament had conferred statutory powers, the exercise of which might lead to the detriment of subjects who had to submit to their jurisdiction. A private arbitrator was resorted to because the parties did not wish to go to court, and all rights and procedural matters were set out in the Arbitration Act, 1950. It would be a great departure from the law relating to prerogative writs if the present application were granted.

CROOM-JOHNSON and PEARSON, JJ., agreed. Application dismissed.

APPEARANCES: *R. Bax* (*Lamartine Yates & Lacey*, for *Francis & Davies*); *Astell Burt* (*Beddington, Hughes & Hobart*); *H. Vester* (*Tackley, Fall & Read*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[2 W.L.R. 342**

JUSTICES: JURISDICTION: LIMITATION: BUILDING MATERIALS AND HOUSING ACT, 1945: CONTINUING OFFENCE

R. *v.* Wimbledon Justices; *ex parte* Derwent

Lord Goddard, C.J., Croom-Johnson and Pearson, JJ.

23rd January, 1953

Application for order of prohibition.

On 12th June, 1952, seven informations were preferred against the applicant, a builder, charging him with offences under s. 7 (1) of the Building Materials and Housing Act, which makes it a summary offence, in a case in which a house has been constructed under a licence from a local authority and which contains a condition limiting the amount for which the house may be sold or let, to sell or offer to sell, or to let or offer to let the house, at a price or a rent higher than that permitted. In the first case the applicant was charged with letting a house on 27th April, 1950, for seven years from 25th March, 1950, at a rent of £245 per annum exclusive of rates, notwithstanding that the permitted rent was £220 per annum. Before the justices the preliminary point was taken on behalf of the applicant that the justices had no jurisdiction to hear the charge since the information had not been laid within six months of the time when the matter of the information arose, namely, 27th April, 1950, as required by s. 11 of the Summary Jurisdiction Act, 1848, when the Act relating to the particular offence does not limit the time within which proceedings might be taken, as was the case in the present instance. The justices, on the application of the prosecution, amended the information by the addition of the words "the said house continued to be let and is still let at the said rent which is in excess of the rent so limited." They held that they had jurisdiction to hear the information but adjourned the proceedings. The Divisional Court gave leave to the applicant to apply for an order of prohibition on his submission that the offence charged was complete at the date of the granting of the lease and was not a continuing offence during its currency, and that, consequently, as the informations were not preferred within six months of the date of the letting, the justices had no jurisdiction to hear them.

LORD GODDARD, C.J., said that in his view the case was an extremely simple one though it might be that owing to the way in which the Act of 1945 was drafted a considerable difficulty was thrown in the way of local authorities in enforcing its provisions. That was not a matter for the court because—although in construing an Act the court must always try to give effect to the intention of the Act and must look not only at the remedy which it provided but also the mischief aimed at—they could not add words to a statute which were not there, and if it created a specific offence, it was not for the court to find other offences which did not appear in the statute. The case involved a very simple question of construction and they were not concerned with its merits. The difficulty in the way of the local authority was that the offence of selling or letting a house at a price above the permitted price was made a summary offence and a summary offence only. Summary jurisdiction was entirely a creation of statute. Justices could only sit as a court of summary jurisdiction in accordance with the statute which enabled them to decide a case in a summary manner and their proceedings were governed by the Summary Jurisdiction Acts. Section 11 of the Act of 1848 provided that in all cases in which no time was specially limited for taking proceedings in the Act relating to a particular case, they must be taken within six calendar months from the time when the matter in question arose. If, in a case before justices, it could be seen on the face of the proceedings that the offence was alleged to have been committed more than six months before the information was laid, justices had no jurisdiction to enter on the case at all. What the court had to consider was whether, in the present case, the offence took place more than six months before 12th June, 1952, the date on which the information was laid. The justices allowed an amendment to the information by adding the words "and the house continued to be and is still let at the said rent which is in excess of the rent so limited," and the court was asked to say that those words were to be construed as meaning that the offence was a continuing one, committed during the whole time of the currency of the lease. In his opinion such a construction was frankly impossible. A person let a house once and for all when he demised it by way of a lease and they could find nothing in the words of s. 7 (1) which enabled them to construe the words "lets or offers to let" as creating a continuing offence any more than, as admitted, they could construe the word "sells or offers to sell" as doing so.

The court had no doubt that on the true construction of s. 7 (1) the offence was committed once and for all when the lease was executed on 27th April, 1950. That being so, s. 11 of the Summary Jurisdiction Act deprived the justices of jurisdiction to deal with the case because the offence was committed more than six months before the information was laid. The applicant was therefore entitled to an order of prohibition in each of the seven cases.

CROOM-JOHNSON and PEARSON, JJ., delivered assenting judgments.

APPEARANCES: *M. R. Nicholas* (*Kenneth Brown, Baker, Baker*); *Eric Sachs*, Q.C., and *J. L. Elson Rees* (*Edwin M. Neave*).

[Reported by PHILIP B. DURNFORD, Esq., Barrister-at-Law] [2 W.L.R. 350

ROAD TRAFFIC: DRUNK IN CHARGE OF A MOTOR VEHICLE: INTENTION TO DRIVE

Haines *v.* Roberts

Lord Goddard, C.J., Croom-Johnson and Pearson, JJ.
26th January, 1953

Case stated by Monmouthshire justices.

An information was preferred against the defendant that on 18th July, 1952, at Abergavenny, he was under the influence of drink to such an extent as to be incapable of having proper control of a motor-cycle of which he was in charge. The defendant was found by the police in an intoxicated condition in the rear yard of a motor garage within about 5 feet of a motor-cycle. On being asked if it was his, he replied: "That is my bike, you leave it alone." He was then asked whether he intended to ride it in his condition, and he said: "If I want to ride that bike I will ride it and no one in town will stop me." The police assisted the defendant to the police station, where he was examined by the police surgeon, and was later charged under caution and he replied: "I was not in charge of any bloody bike". Before the police had arrived the defendant had been asleep in the yard, and some friends had tried to make arrangements by which another person would ride the defendant's cycle home, and tell his father to fetch him. The defendant was unaware of these arrangements and the police arrived before they had been completed. The justices found that the defendant was under the influence of drink to such an extent as to be incapable of having proper control over a motor vehicle. After considering a number of Scottish decisions, the justices came to the conclusion that the defendant's friends intended, and would have been able, to stop the defendant from riding or attempting to ride his cycle. They also were not satisfied that the defendant really intended to ride his motor-cycle, and considered that his remarks in that connection were in the nature of defiance of authority and drunken bravado. They accordingly found the defendant not guilty. The prosecutor appealed.

LORD GODDARD, C.J., said that the justices had given a great deal of attention to the case, and had had certain Scottish decisions cited to them; but they were not binding on them, and he thought that some of them were clearly distinguishable. But here it was clear that the defendant was in charge of the cycle, he had not given it into anybody else's charge, and until he had done so he remained in charge. He was not charged with driving while under the influence of drink. In those circumstances the case must go back to the justices with an intimation that the offence was proved.

CROOM-JOHNSON and PEARSON, JJ., concurred. Appeal allowed.

APPEARANCES: *Arthur G. Davies* (*Torr & Co.*, for *H. J. P. Candler*, Abergavenny); *James Campbell* (*Gibson & Weldon*, for *Everett & Tomlin*, Pontypool).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law.] [1 W.L.R. 309

COURT OF CRIMINAL APPEAL

CRIMINAL LAW: EVIDENCE OF PREVIOUS CONVICTIONS: CHARGES OF RECEIVING AND LARCENY

R. *v.* Davies

Lord Goddard, C.J., Croom-Johnson and Pearson, JJ.
26th January, 1953

Appeal against conviction and sentence.

The appellant was brought before examining justices and charged with receiving stolen goods. Evidence was given, pursuant to s. 43 (1) of the Larceny Act, 1916, by a constable of a previous conviction for receiving, and was included in the depositions. Before quarter sessions, the prosecution were given leave to add a count charging the appellant with being an accessory after the fact to larceny. The trial proceeded on both counts, and evidence of the previous conviction was given. The prosecution abandoned the charge of receiving; the appellant was convicted on the charge of being an accessory, and was sentenced to eight years' preventive detention. Section 43 (1) provides that where a person is proceeded against "for receiving any property, knowing it to have been stolen . . . there may be given in evidence . . . (*b*) the fact that within the five years preceding the date of the offence charged he was convicted of any offence involving fraud or dishonesty." It was contended on appeal that the evidence ought not to have been admitted when the appellant was also charged with being an accessory to larceny.

LORD GODDARD, C.J., said that it was not surprising that the evidence had been admitted in view of certain observations of Humphreys, J., in *R.* v. *Jones* (1948), 33 Cr. App. R. 33; but the remarks were *obiter*, and the court was not directly considering the admissibility of such evidence when there was a charge of being an accessory. In *R.* v. *Ballard* (1916), 12 Cr. App. R. 1, it was said that "if the charge is substantially one of stealing, and not receiving, the evidence ought not to be admitted." That case showed the true rule. If the case was substantially one of receiving, and the jury were not asked to find a verdict on some other count, such evidence could be admitted, but if the prosecution had to rely on some other count, whether stealing or being an accessory, such evidence should not be given. It was evidence of a most prejudicial nature, no matter what warning the chairman might give to the jury, and it was only introduced by Parliament because of the special difficulty which existed in proving guilty knowledge in receiving cases. The appeal against conviction would therefore be allowed; but the prosecution would have leave to proceed on two other indictments for receiving on other occasions which remained on the file.

CROOM-JOHNSON and PEARSON, JJ., agreed. Appeal allowed.

APPEARANCES: *J. C. G. Burge* (*Canter, Hellyar & Co.*); *Niall MacDermot* (*Burgess & Chesher*, Bedford).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 304

CRIMINAL LAW: CORRECTIVE TRAINING FOLLOWING IMPRISONMENT FOR ANOTHER OFFENCE: UNDESIRABILITY

R. *v.* Talbot

Lord Goddard, C.J., Croom-Johnson and Pearson, JJ.
26th January, 1953

Appeal against sentence by the Secretary of State referring the prisoner's petition to the court under s. 19 (*a*) of the Criminal Justice Act, 1907.

The prisoner, a man of bad character, was convicted of shop-breaking and larceny and was sentenced to three years' corrective training by virtue of s. 21 of the Criminal Justice Act, 1948. There were at that time two other offences outstanding against him; one charge was for driving while disqualified from holding a driving licence, and the other was for using a driving licence with intent to deceive, conviction for which rendered a person liable to, respectively, imprisonment for a term not exceeding six months unless the court could find some special reason for thinking that a fine would meet the case and a maximum sentence of two years' imprisonment. On 22nd April, 1952, at Sheffield quarter sessions he was convicted of both offences and received two sentences of six months' imprisonment to run concurrently and to take effect at the conclusion of the period of corrective training. The prisoner petitioned the Secretary of State asking that the sentences of imprisonment might be altered to corrective training.

LORD GODDARD, C.J., delivering the judgment of the court, said that this case showed the difficulties which arose from the new sentences which Parliament had put in the Criminal Justice Act, 1948. In providing that in certain circumstances corrective training could be imposed instead of imprisonment, certain conditions precedent had to be performed, such as giving notice of intent to prove previous convictions. It followed that a person could not be sentenced to corrective training for driving when disqualified because that was not an offence punishable with two years' imprisonment on indictment. But he could have been sentenced to corrective training for using a driving licence with intent to deceive, provided that the appropriate notices had

been served, and it was shown that he was a person with the necessary previous convictions. This court had already said that, where a person had been sentenced to corrective training, it appeared to them to be undesirable that the sentence should be followed with a sentence of imprisonment for another offence. Corrective training was a substitute for imprisonment to this extent, that the prisoner served his sentence in specially set aside prisons. The discipline was different and attempts were made to teach the man a trade or inculcate habits of discipline and regularity. If the notices had been served the recorder could have increased the sentence of corrective training from three years to four years, which would have kept him in corrective training for the maximum period of four years instead of three years. It was undesirable to pass a sentence the effect of which would be that a man would cease to do corrective training and go into imprisonment when he had earned remission or had completed his sentence of corrective training: the only course therefore would have to be that the sentence passed at Sheffield would be concurrent with the sentence of corrective training, and that in the result the concurrent sentences of imprisonment had no effect. Appeal allowed.

APPEARANCES: *Michael Havers* (*Registrar of the Court of Criminal Appeal*); *J. F. Drabble* (*Town Clerk, Sheffield*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[2 W.L.R. 346**

SURVEY OF THE WEEK

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Consolidated Fund Bill [H.C.] [4th February.

Hospital Endowments (Scotland) Bill [H.L.] [5th February.

To provide for the constitution of a Scottish Hospital Endowments Research Trust; to empower the Hospital Endowments Commission to transfer endowments to the said Trust; to amend the provisions of the National Health Service (Scotland) Act, 1947, relating to the said Commission; and for purposes connected with the matters aforesaid.

Read Second Time:—

Great Northern London Cemetery (Crematorium) Bill [H.L.] [4th February.

Merchandise Marks Bill [H.L.] [5th February.

Read Third Time:—

Agricultural Land (Removal of Surface Soil) Bill [H.C.] [3rd February.

HOUSE OF COMMONS

A. DEBATES

On the motion for the Adjournment, Mr. C. R. HOBSON raised the question of the recent House of Lords decision in *Parvin* v. *Morton Machine Company*. Mr. Parvin was an apprentice employed by the defendants. He had been ordered to clean the grease off a machine which had been under construction. Whilst he was doing so the fitter who had given him the order started the machine, and as a consequence Mr. Parvin had been seriously injured. The plaintiff had argued that there had been a breach of s. 14 (1) of the Factories Act, 1937, which states: "Every dangerous part of any machinery, other than prime movers and transmission machinery, shall be securely fenced."

The defendants contended that the word "machinery" was limited to manufacturing machinery, and not to machinery which was *being* manufactured. The House of Lords had upheld this contention. This decision would also presumably apply to manufacturing machinery which was being repaired or maintained, i.e., there would be no liability if the machinery were started up whilst the covers or fences were off for such purposes. Some such work could indeed only be done while the machinery was in motion—and yet the workman was wholly unprotected under the Factories Act in the event of anyone being negligent.

He would ask that regulations be made under s. 60 of the Factories Act to cover this position. Ten or fifteen similar cases were pending and the men would say they were not prepared to take the risks involved because their only redress would be under common law. The Parliamentary Secretary knew that under common law if it could not be proved that there had been a breach of the Factory Act, considerably less compensation was awarded.

Mr. CHARLES DOUGHTY said this was not true. It might be a little harder to establish the claim in the courts, but if it *was* established the same damages to a penny were awarded as if a breach of statutory duty had been proved. Mr. BARNETT JANNER said there was grave anxiety about this matter. There were cases where compensation had been refused altogether because of this decision. It was essential for the Minister to deal with the matter.

For the Minister of Labour, Mr. HAROLD WATKINSON said that a survey was being made of accidents caused by machinery in course of construction and after this had been completed and both sides of industry consulted, the question of making new regulations to cover the matter would be gone into. [30th January.

B. QUESTIONS

TENANTS, SOUTH LONDON (THREATENED LEGAL PROCEEDINGS)

Mr. ISAACS asked whether the Attorney-General was aware that tenants in South London were receiving letters demanding arrears of rent and threatening legal proceedings from persons using fictitious names and despatched from accommodation addresses in London and Dublin; and what action he proposed to take to protect tenants from these annoyances. Sir LIONEL HEALD said that in his view the facts stated did not disclose a *prima facie* case of commission of a criminal offence and he did not propose to take any action. [2nd February.

LOCAL AUTHORITIES (NOTICES TO QUIT)

Mr. HYLTON COCKER asked whether the Minister would consider the inconvenience to local authorities emphasised by the decision in *Becker* v. *Crosby Corporation*, resulting from the fact that notices to quit addressed to council tenants had to be enforced by an officer who might not work in the department in which the management, regulation and control of the authority's houses was carried out, and if he would bring in legislation or give guidance on the matter. Mr. MACMILLAN said he was not satisfied that any inconvenience arose from the decision referred to. The requirement of s. 164 (2) of the Housing Act, 1936, did not of itself involve the clerk or his lawful deputy in any procedure leading up to the issue of a notice to quit. Its purpose was merely that of authentication. [3rd February.

STATUTORY INSTRUMENTS

Confectionery (Records) Order, 1953. (S.I. 1953 No. 146.)

East of Birmingham—Birkenhead Trunk Road (Coseley Section) Order, 1953. (S.I. 1953 No. 107.)

Edinburgh—Carlisle Trunk Road (North Middleton and other Diversions) Order, 1953. (S.I. 1953 No. 108.) 5d.

Exchange Control (Authorised Depositaries) (Amendment) Order, 1953. (S.I. 1953 No. 137.)

Federated Superannuation System for Universities (Pensions Increase) Regulations, 1953. (S.I. 1953 No. 121.) 5d.

Import Duties (Drawback) (No. 1) Order, 1953. (S.I. 1953 No. 125.)

Draft **Iron and Steel** Foundries Regulations, 1953. 6d.

Lleyn Water Order, 1952. (S.I. 1953 No. 129.) 6d.

London—Penzance Trunk Road (Wrangaton Railway Bridge) Order, 1953. (S.I. 1953 No. 111.)

London Traffic (Prescribed Routes) (No. 5) Regulations, 1953. (S.I. 1953 No. 113.)

London Traffic (Prescribed Routes) (No. 6) Regulations, 1953. (S.I. 1953 No. 135.)

North of Scotland Hydro-Electric Board (Constructional Scheme No. 25) Confirmation Order, 1953. (S.I. 1953 No. 138 (S. 15).)

Pensions Appeals Tribunals (England and Wales) (Amendment) Rules, 1953. (S.I. 1953 No. 130 (L. 3).)

Rationing (Personal Points) (Revocation) Order, 1953. (S.I. 1953 No. 145.)

Retention of Pipe under Highway (Flintshire) (No. 1) Order, 1953. (S.I. 1953 No. 109.)

Solicitors' Remuneration Order, 1953. (S.I. 1953 No. 117 (L. 1).) 6d.

Solicitors' Remuneration (Registered Land) Order, 1953. (S.I. 1953 No. 118 (L. 2).)

Stopping up of Highways (Caernarvonshire) (No. 1) Order, 1953. (S.I. 1953 No. 110.)

Stopping up of Highways (Northumberland) (No. 1) Order, 1953. (S.I. 1953 No. 133.)

Stopping up of Highways (West Riding of Yorkshire) (No. 1) Order, 1953. (S.I. 1953 No. 132.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

NOTES AND NEWS

Honours and Appointments

The Queen has approved that the honour of knighthood be conferred upon Mr. HILDRETH GLYN-JONES, Q.C., and Mr. ALBERT DENIS GERRARD, Q.C., on their appointment as judges of the High Court of Justice.

Miscellaneous

COMMITTEE ON ADOPTION LAW

The law affecting adoption of children will be considered by a special committee, states a joint Home Office and Scottish Home Department statement. It will consider whether any changes in policy or procedure are desirable (see p. 100, *ante*). The chairman will be Sir Gerald Hurst, Q.C., and the members are The Hon. Mrs. M. E. Edwards, Mr. J. G. Harris, Mrs. L. Hopkin, Mr. S. G. Kermack, Dr. Doris Odlum, Mr. H. H. C. Prestige, Mrs. Madeleine Robinson and Mr. H. M. Rowe.

"NEW TRIALS" COMMITTEE

The Home Office announces that the departmental committee appointed by the Lord Chancellor and the Home Secretary in December to consider whether the Court of Criminal Appeal and the House of Lords should be empowered to order a new trial of a convicted person in criminal cases has held its first meeting and is ready to consider evidence. Any person or body wishing to submit evidence to the committee should communicate as soon as possible with the Secretary, Mr. R. A. James, Home Office, Whitehall, S.W.1.

L.C.C. DEVELOPMENT PLAN INQUIRY

Objections relating to Camberwell and Woolwich will begin to be heard at 10.30 a.m. on Monday, 16th February, at the inquiry into objections to the development plan for the County of London.

A special university lecture in laws on Law and Practice in Northern Ireland will be given by The Rt. Hon. Lord MacDermott, P.C., M.C., LL.B., Lord Chief Justice of Northern Ireland, at University College (Anatomy Theatre), Gower Street, W.C.1, at 5 p.m. on Friday, 20th February, 1953. The chair will be taken by Professor Glanville Williams, LL.D., M.A., Quain Professor of Jurisprudence in the University of London. The lecture is addressed to students of the university and to others interested in the subject. Admission is free, without ticket.

THE SOLICITORS ACTS, 1932 TO 1941

HENRY JOHN CRIDLAND, of Magistrate's Chambers, Supreme Court, Kumasi, Ashanti, Gold Coast, solicitor, having, in accordance with the provisions of the Solicitors Acts, 1932 to 1941, made application to the Disciplinary Committee constituted under the Act that his name might be removed from the Roll of Solicitors at his own instance on the ground that he desires in due course to be called to the Bar, an order was, on the 30th day of January, 1953, made by the Committee that the application of the said Henry John Cridland be acceded to and that his name be removed accordingly from the Roll of Solicitors of the Supreme Court.

On the 30th January, 1953, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon HAROLD SKLAN, of 29 Green Street, London, W.1, and 17 Market Place, London, N.W.11, a penalty of one hundred and fifty pounds (£150) to be forfeit to Her Majesty, and that he do pay to the complainant his costs of and incidental to the application and inquiry.

On the 30th January, 1953, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that ROBERT JAMES CLARK, of 2 and 4 George Street, Croydon, in the County of Surrey, be suspended from practice as a solicitor for a period of two (2) years from the 30th January, 1953, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

DEVELOPMENT PLANS

SOMERSET COUNTY COUNCIL DEVELOPMENT PLAN

The above development plan was on 30th January, 1953, submitted to the Minister of Housing and Local Government for approval. It relates to land situated within the administrative County of Somerset, and comprises land within the under-mentioned districts. A certified copy of the plan as submitted for approval has been deposited for public inspection at the County Planning Department, 41 Upper High Street, Taunton. Certified copies or extracts of the plan so far as it relates to the under-mentioned districts have also been deposited for public inspection at the places mentioned below :—

Axbridge Rural District.—Surveyors Department, Council Offices, West Street, Axbridge.

Bathavon Rural District.—Council Offices, Westgate Buildings, Bath.

Bridgwater Borough.—Town Hall, Bridgwater.

Bridgwater Rural District.—Town Hall, Bridgwater.

Burnham-on-Sea Urban District.—Surveyors Offices, Manor Gardens, Burnham-on-Sea.

Chard Borough.—Municipal Offices, Durstons, High Street, Chard.

Chard Rural District.—Municipal Offices, Durstons, High Street, Chard.

Clevedon Urban District.—The Council House, Clevedon.

Clutton Rural District.—Council Offices, Temple Cloud.

Crewkerne Urban District.—Council Offices, Crewkerne.

Dulverton Rural District.—Council Offices, Dulverton.

Frome Urban District.—Clerk's Office, Urban District Council, Frome.

Frome Rural District.—Clerk's Office, Urban District Council, Frome.

Glastonbury Borough.—Town Clerk's Office, Glastonbury.

Ilminster Urban District.—Council Offices, Ilminster.

Keynsham Urban District.—Council Offices, Keynsham.

Langport Rural District.—Council Offices, North Street, Langport.

Long Ashton Rural District.—Council Offices, Flax Bourton, near Bristol.

Minehead Urban District.—Council Offices, 39 Blenheim Road, Minehead.

Norton Radstock Urban District.—Council Offices, Midsomer Norton.

Portishead Urban District.—Council Offices, Portishead.

Shepton Mallet Urban District.—Council Offices, Market Place, Shepton Mallet.

Shepton Mallet Rural District.—Council Offices, Market Place, Shepton Mallet.

Street Urban District.—Council Offices, Street.

Taunton Borough.—Municipal Buildings, Taunton.

Taunton Rural District.—Municipal Buildings, Taunton.

Watchet Urban District.—Council Offices, Watchet.

Wellington Urban District.—Council Offices, 35 Fore Street, Wellington.

Wellington Rural District.—Council Offices, 35 Fore Street, Wellington.

Wells City.—Town Clerk's Office, Chamberlain Street, Wells.

Wells Rural District.—Town Clerk's Office, Chamberlain Street, Wells.

Weston-super-Mare Borough.—Town Hall, Weston-super-Mare.

Williton Rural District.—Rural District Council Offices, Williton.

Wincanton Rural District.—Council Offices, Wincanton.

Yeovil Borough.—Area Planning Offices, Hendford Manor, Yeovil.

Yeovil Rural District.—Area Planning Offices, Hendford Manor, Yeovil.

Certified extracts of appropriate areas are also deposited at Area Planning offices as under :—

North Somerset.—14 Boulevard, Weston-super-Mare.

North-East and Central Somerset.—1 Waterloo Road, Radstock.

South-East Somerset.—Hendford Manor, Yeovil.

West and West Central Somerset.—41 Upper High Street, Taunton.

The copies or extracts of the plan so deposited are available for inspection free of charge by all persons interested at the places mentioned above during normal office hours. Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 31st March, 1953, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Somerset County Council and will then be entitled to receive notice of the eventual approval of the plan.

County Borough of South Shields Development Plan

On 15th January, 1953, the Minister of Housing and Local Government approved (with modifications) the above development plan.

A certified copy of the plan as approved by the Minister may be inspected from 10 a.m. to 4 p.m. (Saturdays 10 a.m. to 12 noon) at the Town Clerk's Office, Town Hall, South Shields. The plan became operative as from 29th January, 1953, but if any person aggrieved by the plan desires to question the validity thereof or of any provision thereof on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 29th January, 1953, make application to the High Court.

SOCIETIES

The 1953 dinner of the Bentham Club will be held at University College, London, on Tuesday, 24th February, at 7.15 p.m. The Master of the Rolls will deliver a presidential address on "The Influence of Remedies on Rights." Membership of the Bentham Club is open to all graduates of the Faculty of Laws of University College, London. Enquiries should be addressed to: The Secretary, Bentham Club, Faculty of Laws, University College, London, Gower Street, London, W.C.1.

The third annual dinner and dance of the Plymouth Law Students' Society was held on 4th February. Among the guests present were the Lord Mayor of Plymouth, Alderman H. E. Wright, and the President of the Incorporated Law Society of Plymouth, Mr. Ernest Vosper.

CASES REPORTED IN VOL. 97

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: 102–103 Fetter Lane, London, E.C.4. Telephone: CHAncery 6855.

Annual Subscription: Inland £3 15s., Overseas £4 5s. (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Wednesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).